

Ignition Interlock Devices and Vehicle Immobilization:

**A Summary of the Law and Science, a Review of the Literature,
and an Analysis with Legal Professionals, Law Enforcement and
Alcohol Assessment Agencies in Wisconsin**

Final Report Summarizing Phase I and Phase II

Prepared For:

Wisconsin State Legislature

By:

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December 26, 2003



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December 26, 2003

Dear Wisconsin State Legislators,

We are pleased to submit the results of our joint study evaluating the effectiveness of Ignition Interlock Devices (IIDs) and other vehicle sanctions including vehicle immobilization.

The Department of Transportation, Bureau of Transportation Safety, in conjunction with the Department of Health and Family Services, worked with representatives of law enforcement, the legal community, and alcohol assessment agencies to provide a comprehensive review of IIDs and vehicle immobilization.

The study involved extensive dialogue with legal professionals, law enforcement professionals and local, alcohol assessment agencies, and IID vendors; a review of existing literature, and an analysis including opinions on the use of IIDs and other vehicle sanctions. The final report includes the study findings regarding legal and technical aspects of IIDs and vehicle immobilization, their effectiveness, implementation and legislative considerations for Wisconsin.

Each study participant gave their time, commitment and expertise to the process, and they are to be commended. Thank you for providing the Wisconsin Department of Transportation and the Department of Health and Family Services with the opportunity to conduct this evaluation. Questions regarding the study should be directed to Tim McClain, Wisconsin Department of Transportation, Bureau of Transportation Safety at (608) 267-5136.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Busalacchi".

Frank J. Busalacchi
Secretary
Wisconsin Department of Transportation

A handwritten signature in black ink, appearing to read "Helene Nelson".

Helene Nelson
Secretary
Wisconsin Department of Health and Family Services

CC: Governor Jim Doyle

Primary Conclusions

The following, primary conclusions have been identified by the Wisconsin Department of Transportation and Wisconsin Department of Health and Family Services based upon the findings found within this report (note that these are not listed in any priority):

- **Follow-thru/accountability problems with implementing the IID law.** As indicated in this report, program success is dependent upon follow-through, communication and coordination by the agencies and courts involved (e.g., law enforcement, alcohol assessment agencies, judges who initiate the order). It is evident by the large disparity between the number of court orders and those that are actually complied with that implementation is simply not occurring. This is strongly correlated to funding and resource constraints that have inhibited implementation of the IID program.
- **Conflicts with federal, 12-month suspension rule.** The federal rule included under the Transportation Equity Act, requiring a 12-month hard suspension of an operator's driving privilege after conviction and before an ignition interlock device can be installed, severely impedes the State's IID Law. The optimum time to implement an IID is immediately after conviction. Due to the federal, 12-month suspension rule, a person must wait at least a year after conviction before an IID can be installed.
- **Cost problems.** As indicated in this report, the cost borne by the offender to install the IID (approximately \$1,000 per year), is perceived by many professionals - legal professionals, law enforcement, alcohol assessment agencies surveyed in this report - to be a major impediment to compliance in order to ensure success of the program.

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Executive Summary

In 2002, 292 people were killed and 6,570 people were injured in 8,922 alcohol-related crashes. Alcohol-related crashes account for 6.9% of all crashes in the state, 40% of all motor vehicle fatalities, and 11% of all motor vehicle injuries. Public agencies are continually searching for new ways to deal with the frustrating problem of drunk driving.

Although very little research exists on vehicle immobilization and seizure, communities to prevent drunk driving have used these tools on a very limited basis. In the late 1980s, Ignition Interlock Devices (IIDs) emerged as a high-tech solution to prevent repeat drunk driving. As a result, IIDs have become a popular sanction compared to other sanctions such as immobilization.

In 1993, the Wisconsin Legislature passed Act 277, an omnibus drunk driving bill that allowed for the application of IIDs around the state. Ten years later, it was time to look critically at how IIDs and immobilization/seizure have been working.

1999 Wisconsin Act 109 required the Department of Transportation to promulgate a revised administrative rule regarding the provision of IIDs and the evaluation of vendors. **In addition, section 88(3) of the Act stated:**

“The Department of Transportation and the Department of Health and Family Services shall study jointly and evaluate the effectiveness of using ignition interlock devices and vehicle immobilization as methods of reducing the prevalence of drunk driving and the recidivism of drunk-driving offenders. The departments shall consult with the counties, the law enforcement agencies, the courts and the providers of services to alcohol abusers regarding this study and evaluation. No later than the first day of the 24th month beginning after the effective date of section 343.301 of the statutes, as created in this act, the department shall submit a report to the legislature in the manner provided under section 13.172 (2) of the statutes that contains the conclusions of the departments’ study and evaluation and any recommendations concerning implementation of the conclusions.”

The purpose of this report is to fulfill the above mandate by studying the effectiveness of IIDs and other vehicle sanctions through research on the topic as well as identifying opinions among professionals at the state and local level.

This report reflects two phases of research (Phase I and Phase II) which were conducted during 2003 on the topic:

Phase I Literature Review (Winter 2002, Spring 2003):

This phase constituted the first stage of the evaluation, providing a literature review and prospectus for future work and study. Statutory law, academic papers, program evaluations, and internet sources were synthesized. Law enforcement, alcohol assessment agencies and legal professionals thought to having familiarity with Ignition Interlock Devices were also consulted, and preliminary data was included. As the research proceeded, it was discovered that IIDs were used in much higher numbers than vehicle immobilization. As a result, while vehicle immobilization will be addressed in this report, greater emphasis will be placed on Ignition Interlock Devices as the current, and more popular sanction.

The Phase I Report (included within this document) is divided into the following four chapters:

- **Chapter One** provides a theoretical perspective on the crime of drunk driving, and an explanation of the psychology of a recidivist drunk driver. The repeat drunk driver is an unusual and relatively rare individual, and understanding this uniqueness is important in constructing an effective sanction. This chapter also attempts to explain how vehicle sanctions can be expected to work within this legal and psychological framework.
- **Chapter Two** examines the IID device itself, and lays out the chronology and development of the IID law in Wisconsin.
- **Chapter Three** compiles some preliminary data about the Wisconsin experience with IIDs, and looks closely at the scholarly research that has been conducted on the strengths and limitations of IIDs. This chapter also identifies research regarding alternative vehicle sanctions including: license suspension, electronic monitoring and vehicle immobilization.
- **Chapter Four** summarizes the findings, and lays a path for further research based upon the work reviewed in chapter 3. There is also a bibliography and glossary of terms included at the end of the report.

Phase I Report Findings

The principal findings of this report are as follows:

- **Vehicle immobilization can be costly and impractical in terms of law enforcement.** As with vehicle seizure, the lag time between orders and implementation can allow the driver to unload a nice car and assign the immobilization order to a “junker” vehicle. Also, vehicle immobilization can create other legal problems such as obstructing traffic and illegal parking depending upon where the vehicle is parked.
- **The inclusion of IIDs in the judicial toolkit is one of the principal legal changes of drunk driving law in the last decade.** As a result, IIDs have become more commonly ordered than other sanctions like vehicle seizure or immobilization.
- **IIDs attempt to provide a flexible and humane sanction, a device that allows the offender to conduct his/her life and travel fairly normally so long as she/he stays sober.**
- **Most IID orders in Wisconsin are not complied with.** IIDs may work in a controlled environment, but the actual implementation leaves much to be desired. Plainly put, offenders infrequently comply with court orders for IIDs. Three significant factors exist: the expense to the driver of IID installation; the small possibility of being caught for shirking an IID order; and a general lack of knowledge about how IIDs work. In addition, many offenders fail to reinstate their driver’s license, which is required for compliance with the IID order.
- **Preliminary evidence suggests that IIDs are not uniformly assigned around the state and that there may be a geographic bias where areas closer to IID vendors assign IIDs more frequently** (Note however in Phase II, two vendors disputed the assertion that IIDs are not uniformly available statewide, and stressed their diversity statewide and their willingness to accommodate. One vendor noted that he operated in cities across the state and was equipped with a mobile van for service. One vendor acknowledged that service was not uniform, and that the distance and expense of traveling to service centers could further deter compliance).
- **Drunk drivers, even repeat drunk drivers, are a heterogeneous population.** Depending on their personality type, traditional treatments or other sanctions may work better than IIDs. IIDs have a place in preventing recidivism, but some have also suggested that better results could be achieved by disaggregating offenders for more individualized treatment. The Weinrath study concludes: *“Put simply, the success of Alberta’s [IID] program likely was due to more individualized management of impaired drivers than ... other programs.”*

- **Although popular, The IID is no “silver bullet.”** In controlled studies, IIDs work in the short term, while they are on the car; but it appears that there is not any long-term behavioral effect. IIDs may be more useful to the offender in the period immediately after arrest, but research suggests that money might be better allocated to different treatment, especially non-vehicular sanctions.
- **An IID may be the right choice for a small segment of the population (repeat offenders) responsible for drunk driving, however it does not address the repeat offender’s need for alcohol.** To be fair, it can also be argued that this may not be the purpose of IIDs. IIDs may simply protect the public from a repeat offender who can no longer be trusted on the road.
- **The implementation of IIDs is as important as how well the device works itself.** If looking at IIDs very narrowly, when compliance is enforced and resources are committed, they seem to work. But looking more broadly, when compliance is less supervised and the initial interest in IIDs has faded, the device becomes less effective. Research suggests that in order to make IIDs work as they are supposed to, more time and money needs to be devoted to IID enforcement and development of an effective process for compliance with the court order.
- **If IIDs are not worth the additional funding support, some have suggested that the money should go into traditional treatment for a substance abuse disorder and remediation, or else a new statutory sanction could be developed.**
- **The Federal rule requiring a one-year hard suspension for repeat offenders (two or more convictions within a 5-year period), thwarts the effectiveness of an IID program because an IID cannot be ordered until after the suspension has been satisfied.**

Phase II: Analysis with Legal Professionals, Law Enforcement, Counties, and Assessment Agencies (Summer 2003)

Opinions were collected on various aspects of IIDs and vehicle immobilization. The Department of Transportation distributed surveys to law enforcement, alcohol assessment professionals, district attorneys, judges and private attorneys statewide, and also consulted with IID vendors. By conferring with sheriffs, county human service agencies, district attorneys and circuit court judges, the study fulfilled the mandate of consultation with the counties.

The Phase II Report is divided into the following five chapters:

- **Chapter One** of the Phase II report discusses methodology, selection, and participation in the survey.
- **Chapter Two** shows participants' responses to several statements about IIDs and immobilization.
- **Chapter Three** presents responses to open-ended questions from each group surveyed, and conclusions drawn for each group.
- **Chapter Four** analyzes the responses as a whole.
- **Chapter Five** addresses the overarching issue of IID non-compliance, attempting to synthesize the concerns and suggestions articulated across all groups. The report concludes with the findings that have been summarized below.

Phase II Report Findings

- **Assessment professionals held a more optimistic view of IIDs, and sanctions generally, compared to law enforcement and legal professionals.**
- **The survey results for immobilization are mixed. Legal professionals and assessment agencies tend to hold a somewhat higher opinion of immobilization than do law enforcement. However, several respondents (i.e. law enforcement) indicated that immobilization has not proven to be an effective sanction, and that many counties do not have a vehicle immobilization program.**
- **Some respondents (e.g., law enforcement) were skeptical of the effectiveness of any vehicle sanctions due to practical concerns about enforcement – a respondent simply claimed, “They’re all ridiculous.”**
- **Many participants from all the groups surveyed mentioned the issue of ‘follow-through’ or ‘follow-up.’ The respondents felt that IIDs were not a lost cause, but that the state needed to take a more active role in order for the IID program to be effective.**

- **On the issue of coordination among courts, law enforcement and assessment agencies, there was general agreement that more cooperation and information sharing is needed and would be beneficial for everyone .**
- **Judges order IIDs more frequently than other sanctions, and some respondents thought this was because the offender bears the entire cost.** These same respondents thought that the IID has turned out to be an unreliable sanction because of this cost structure. Respondents were split on whether the cost of IIDs is fair, but agreed that requiring the offender to wholly pay for their sanction has not been successful thus far.
- **Many respondents from all the groups felt that more money needs to be committed to the IID program to make it more effective.** Respondents were split on where this money should go: some thought that funding enforcement would ensure IID success; some believed that preventative spending on education was the key; others believed money should assist offenders to right their lives after the offense.
- **Some respondents surveyed saw IIDs as politically attractive solutions that make good public relations.** However, others felt the IID was shallow, appealing on the surface but quite difficult to implement properly, and unable to address the underlying problems of drinking and driving in the long term.
- **Survey results indicate that public awareness of IIDs and the body of law surrounding them is minimal.** Assessment professionals, law enforcement and the courts often evaluated their own knowledge of IIDs as adequate or minimal, but rarely excellent.
- **Courts appear to exercise a certain amount of discretion in ordering IIDs.** In rural areas far from installation centers, judges are more hesitant to issue IID orders.
- **Some respondents indicated that IIDs are not uniformly available statewide, and this discrepancy has affected the distribution of IIDs.** Two vendors disputed the assertion that IIDs are not uniformly available statewide, and stressed their diversity statewide and their willingness to accommodate. One vendor noted that he operated in cities across the state and was equipped with a mobile van for service. Another acknowledged that service was not uniform, and that the distance and expense of traveling to service centers could further deter compliance.
- **One of the three IID vendors indicated that they promote the IID as a law enforcement tool to judges.**
- **The Federal, “repeater law” hampers the effectiveness of IIDs.** Since IIDs have been shown to be most effective when installed immediately after the

offense, the current one-year hard suspension, followed by an IID order, severely limits IID efficacy. Legal professionals in particular thought that more latitude should be given in ordering IIDs and sanctions in general.

- **Some respondents (from all three groups) felt that an effective IID program cannot place the burden of compliance solely on the offender.** These individuals indicated that one of the aims of the IID is to enhance public safety, and some public time and money is necessary to achieve this goal.

Suggestions from survey respondents

In the course of answering open-ended survey questions during Phase II, several participants suggested ways to improve IID service and implementation. These suggestions included:

- **Sliding scale payments.** The cost of IIDs repeatedly arose as a major reason for non-compliance. If lower-income offenders could pay less for the device, respondents suggested, compliance with orders would be higher.
- **A dollar-for-dollar reduction in fines with proof of IID payment and installation.** Rather than demanding that offenders with scant resources pay large fines and the full cost of IID installation, some participants suggested a system where the cost of verified IID installation would offset the fees levied in court.
- **Scheduling a second hearing to verify IID installation.** Offenders would be required to appear in court a certain amount of time after their sentencing to prove compliance.
- **Transfer the responsibility for tracking IIDs to the arresting agency, rather than the county sheriff.**
- **Make assessment professionals responsible for IID compliance, since they are in contact with the recidivists most frequently.**
- **Although unlikely, more than one participant thought that IIDs needed to be installed in every new vehicle.** With this in place, the court would only need to flip a switch to activate the IID on a repeat offender, removing the problems of compliance.

The remainder of this final report presents the detailed results from the two phases of the research study beginning with Phase I (a summary of the law and science and a review of the literature with respect to Ignition Interlock Devices and other vehicle sanctions) followed by Phase II which provides an analysis by law enforcement, legal professionals, alcohol assessment professionals and also including summary opinions by Ignition Interlock Device vendor.

Ignition Interlock Devices and Immobilization:

Phase I Report

A Summary of the Law and Science, a Review of the Literature, and a Prospectus for Further Research

By:

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April 29, 2003

Important note: This report was written before passage of 2003 Wisconsin Act 30 which changed the per se Blood Alcohol Content (BAC) for first offense OWI. The new law, which was implemented beginning on 9/30/03, changed the prohibited BAC from 0.10 to 0.08 and above for first offense OWI.

Chapter One: The Psychology of Drunk Driving and Vehicle Sanctions

A profile of the recidivist drunk driver

Law Professor James Jacobs (1989) notes that: ‘American alcohol consumption is unusual in the high percentage of abstainers. Thus the per-capita alcohol consumption statistic is primarily affected by the drinking behavior of the heaviest 5-10 percent of drinkers, *who account for more than half of all alcoholic beverages consumed*’ (emphasis added).

In understanding and answering questions about IIDs, one must understand the profile of the repeat drunk driver. The recidivist is relatively rare. In Wisconsin in 2000, there were only 24,496 drivers with three or more drunk driving convictions, out of 3.67 million licensed motorists, or less than one per hundred drivers. Those with four or more arrests totaled 7,788, and the totals continue to decline for individuals with more convictions.

However, these statistics reflect only *convictions* for OWI. Some studies have suggested that the average person arrested for DWI has already driven drunk 100-200 times prior to being caught (the work of R.B. Voas touches on this point numerous times) and estimates as to how many impaired miles can be driven before arrest usually conclude in the thousands. Thus some researchers and advocates suggest that a vast majority of those convicted of their first OWI are not truly first-time drunk drivers. Rather, they have already established a pattern of driving drunk, and are only caught because of a traffic violation (causing an accident, swerving across lanes), equipment violation, or because they have tested their luck one too many times.

The fact is, though, that most first-time offenders do not become recidivists. The system of penalties for first time offenders seems to be broadly effective in removing the allure of drunk driving by underscoring its expensive and humiliating side effects (see Dieringer 2001: Phase 3, p. 6). What is essential to grasp is that the *strategy* for dealing with first time offenders is quite different than the strategy for addressing recidivist drunk driving. First time offenders are dealt with by straightforward legal methods outlined in the Dieringer Research Groups report on Alternatives to Incarceration: fines, time in a holding cell while waiting to be picked up, a suspended license, and generally strict recompense. These measures tend to be traumatic, expensive, and embarrassing, making the first time offender very wary of driving drunk again.

Recidivists, on the other hand, have already passed through this gauntlet of corrective measures. They have been undeterred by the initial penalties that keep most offenders from driving drunk again. Because of this, the sanctions against repeat drunk drivers grow more severe, to provide more of a deterrent. For second offenses, jail time becomes a possibility, fines can exceed \$1000, and the length of license revocation doubles. For subsequent offenses, penalties grow still steeper.

Also, the standard of intoxication is lowered for recidivists. A third offender is considered legally intoxicated at .08; for fourth and subsequent offenders, the threshold is .02, or about one drink.¹

However, it may be that the habitual drunk driver is simply not subject to the deterrent effects of the penalties. Short of some truly draconian punishment, this type of offender does not think in terms of future costs. *Because of this irrationality, the IID is intended to be a solution for these kinds of drivers. The IID is supposed to make the smart decisions that the recidivist refuses to make.*

It is eminently important to distinguish between recidivists, and people who have been convicted of one OWI. *However*, first time offenders are not to be taken lightly by any means – they still account for a large majority of OWIs and traffic deaths. Nonetheless, the short-term sanctions applied to these offenders usually stave off future incidences of drinking and driving. These same measures have shown to be quite *ineffective* in dealing with the recidivist. The incentives and preferences that define most first time offenders simply do not generalize to the recidivist population. For example, fines often accumulate to the point where there is no longer any reasonable expectation of immediate or even future payment.

Let us clarify, since there is a tendency to get confused in the terms; clearly, every recidivist was *at one time* a first offender. A first OWI is a significant predictor of subsequent recidivism; *but most first offenders do not recidivate*. The IID, then, is addressing the population who has recidivated and is seen to be unreceptive to the usual treatments.

General characteristics of the recidivist

According to the literature, the recidivist is likely to be:

- Male (85-90 percent)
- White
- Older — mid to late 30s while most OWI arrests occur among younger drivers
- Driving with a BAC far above the legal limit and higher than first-time offenders. Examining Louisiana, Gould & Gould find that the majority of first offenders had BAC below .16, while the majority of recidivists have BAC of .16 or above, with many more recidivists at double or triple the legal limit.
- Involved in other addictive behaviors, especially cigarette smoking

¹ This report was written *before* passage of 2003 Wisconsin Act 30 which changed the *per se* Blood Alcohol Content (BAC) for first offense OWI. The new law, which was implemented beginning on 9/30/03, changed the prohibited BAC from 0.10 to 0.08 and above for first offense OWI.

- Driving drunk on a weekday, and during the morning or afternoon (Berman et al 1987)
- Driving with a suspended or revoked license (Berman et al 1987)

Although these are very general characteristics, they describe a large proportion of recidivists.

However, these characteristics are not good *predictors* of recidivism. After all, most white men in their late 30s are not repeat OWI offenders. So what are the factors that can help to target the driver most likely to repeatedly drive drunk? The strongest predictive factors in recidivism are basic:

- Involvement in previous property crimes and moving violations (Berman et al 1987 found that these two factors were most strongly predictive of future OWIs in Oregon)
- Lack of receptivity and compliance with education and rehabilitation programs
- Age at the time of the first OWI offense – drivers who received their first OWI while younger are more likely to recidivate

In the following research section, though, there is still disagreement over what predicts drunk driving.

Notice that the recidivist profile above suggests that the recidivist is not a young driver. Yet it is certainly true that OWI incidence tends to decrease with age. How can these two facts be reconciled: that the recidivist is older, and that the probability of recidivism decreases with age? The key to this is that the *recidivist often had his first OWI at an early age*. As mentioned above, age at the time of first offense is a strong predictor of non-compliance with rehabilitation and conviction for future OWI (Peck et al 1994).

Research studies have noted that the longer the period of examination, the larger the recidivist population. A major change in Wisconsin state law has been to count all OWI convictions from January 1, 1989 onward. Naturally a larger offender population exists over fourteen years than over a two-year span. In other states, the driving record is cleared after five years. So if a driver was convicted of OWI in 1996, and is charged again in 2002, he will be treated as a first time offender.

Finally, it is worth noting that researchers have often concluded that *recidivism is not simply an all or nothing condition*. Of course, the legal framework tends to draw very sharp and clear lines. But the point is simply that not every second or even third time offender is the same. Some have driven drunk 10 times; some 100 times, and some have done so much more and will continue to do so. There is a scale with 'minor' and 'major' recidivists.

The public view of drunk driving

When constructing penalties for driving drunk, the severity of punishment should match the seriousness of the crime. However, defining the ‘seriousness of the crime’ can be surprisingly difficult with drunk driving. Very clearly, the driver is putting himself and the public at risk. So, too, is the speeder – he engages in an illegal activity that increases the risks of crashes and mortality in those crashes. But the penalty for speeding (and repeat speeding) is almost always a fine. Penalties for driving while intoxicated are much more severe, and are continually increased (see the subsequent section on The OWI Process).

What is decidedly different is *the stigma attached to drunk driving*. The fact that OWI is a risky behavior is not sufficient to merit the increasingly harsh penalties associated with the crime: there is also a firm societal perception that driving while drunk is wrong, not simply risky, and thus not really comparable to speeding or distracted driving. The needless risk imposed on other drivers is deemed sufficient to merit a stiff penalty.

While some national polls reveal that most people revile drunk driving and approve of both stronger sanctions and stiffer deterrents (such as higher alcohol taxes and lower OWI limits), these measures are complicated political entities to implement. Many people voice support for higher alcohol taxes in polls and vote down these taxes in referenda and elections. The individual who disapproves of driving drunk may occasionally drive drunk, and thus be wary of lower BAC standards. For these and other reasons, the public agenda has shifted towards programs like IIDs, which are seen to address and thwart the repeat offenders who consistently put people at risk.

There are many ways to frame the debate about the severity of drunk driving. One could point out that there is estimated to be one fatality for every 600,000 impaired miles driven. At the same time, this rate is almost 100 times as high as the rate for non-impaired drivers (Ross 1992). Thus drunken driving deaths are too frequent, but simultaneously very infrequent.

Ultimately, the public opinion towards driving while intoxicated is difficult to directly incorporate into a sanction. The subsequent sections examine the four basic functions of criminal punishment when addressing recidivist drunk driving.

Explaining drunk driving – costs and benefits

The question of why people commit crimes is still subject to heated debate. To understand the drinking driver and the effectiveness of IIDs, a brief review of a few theories of criminal behavior is useful.

One of the oldest and simplest methods for explaining crime is an economic model. In this model, every act, legal or illegal, has costs and benefits associated with it. If an individual perceives the potential benefits of an action to be larger than the costs, he will pursue the action. Theft is a straightforward example: if the potential gains of robbery

(money, thrill, future security) are greater than the costs (chance of getting caught, possibility of going to jail or getting hurt in the process of the crime), then the crime is worth the risk.

The typical response to crime in this framework is to make the penalties for crimes swifter and harsher – essentially raising the cost of the action to the point where most crimes are no longer “worth it.” During the 1980s and 1990s this method was employed in steeply increased penalties, parole revocation, and mandatory sentencing laws. The underlying idea is to raise the cost of crime, and thus make people more hesitant about committing crimes. Moreover, this ethos rests upon a notion that harsh punishment prevents recidivism. If an individual still commits a crime, they receive a harsh financial or incarceration penalty that makes future crime highly unlikely.

There are three problems with the above model of criminal behavior. First, different people may perceive costs very differently. Both costs and benefits are very subjective, depending on the situation of the individual. The ‘cost’ of being arrested may be much higher for someone with a family, a lucrative job, or a highly public position in society; similarly, the ‘benefit’ of perpetrating a crime may be higher for someone with less education, a more precarious financial situation, or a looming debt to repay. Thus raising penalties may appear to radically change the costs of crime *to the outside observer*; but to the potential criminal, the difference may be less pronounced.

Second, this model assumes that decisions about illegal behavior (or any behavior) are made with excellent information and long-term calculation. But the potential robber, for example, cannot really possess such detailed data – how much resistance he will meet, how quickly the police will respond, and how happy he will be after the crime. In the face of such limited information, it is hard to even know what the costs and benefits will be.

Most importantly, the economic behavioral model does not provide us with a very compelling explanation of why people drive drunk. The benefits of drunk driving are not very great (aside from getting home faster) and the possible costs are very high – fines, license revocation, a night in jail, prison sentences. If people are ostensibly pursuing pleasure and avoiding pain, drunk driving does not appear to be consistent with this mode of behavior.

Finally, alcohol has physiological effects on the user. In the case of drunk driving, the decision maker is impaired. The ability to reason and extrapolate, even if possessed when sober, is compromised under the effects of alcohol:

“By abstract we mean being able to think in ways that are not directly tied to concrete things. We think abstractly when we interpret the meaning of stories ... chronic drinkers often find these abilities compromised ... It is as if abstract thoughts do not come to mind as easily for the chronic drinker.”

(Kuhn, Swartzwelder and Wilson 1998: p. 40)

However, there is considerable scholarly debate over the degree to which alcohol affects decision-making. Some sociologists have argued that alcohol impairment alone does not cause aggressiveness, boisterousness, or lasciviousness. Consider this excerpt from the book “Alcohol, Drugs, and Society” by Ronald Akers:

"The conventional explanation for why people fight, commit sexual indiscretions, and do other things while drunk that they would not ordinarily do is that alcohol affects the brain center responsible for inhibitions; this causes people to lose civilized control over their baser animal instincts, producing a direct alcohol-caused disinhibition. MacAndrew and Edgerton (1969) find no support for this argument. Rather, they find that the outcome of drunkenness may be no change in behavior, greater inhibition, or lowered inhibition, depending on what the person learns to do under given circumstances.

In and of itself, the presence of alcohol in the body does not necessarily even conduce to disinhibition, much less inevitably produce such an effect ... We must conclude that drunken comportment is an essentially learned affair.

Over the course of socialization, people learn about drunkenness what their society 'knows' about drunkenness; and, accepting and acting upon the understandings thus imparted to them, they become living confirmation of their society's teachings. (MacAndrew and Edgerton 1969: 87-88)"

This is not a denial that drinking will impair the driver. However, according to these researchers, the decision to drink and drive is not caused by poor decision making from excess drinking. Rather, people who drink and drive are taking certain cues from society that this behavior is acceptable.

Explaining drunk driving – an alternative theory

An alternative theory addresses this concern and provides a more coherent explanation of drunk driving: the notion that most crimes are products of insufficient self-control. The first model assumes that any individual is making calculations of costs and benefits, sometimes extrapolating quite far into the future – if I do this, I may get caught, I may go to court, I may be convicted, I may go to jail. In other words, in the economic model of crime is usually the result of rational calculation.

In the self-control model, individuals are sometimes rational; but crimes are committed without rational calculation. This contradicts the television and Hollywood image of elaborate, collaborative heists and carefully planned projects. But there is data to support this hypothesis; and more importantly, it seems to supply a much better explanation of drunk driving. In this lens, drunk driving is seen as an impulsive act, a desire that is acted upon without extensive thought about potential consequences. Given that drunk driving happens when a person is impaired, the theory of impulsive action seems like a

viable explanation of at least some drunk driving. The Dieringer Alternatives report goes so far as to say, “*The Wisconsin respondents agreed that persistent drunk drivers are not rational*” (Dieringer 2001: Phase 3, p. 6).

Within this theory, how does the implementation of IIDs fit? At first glance, one would expect the IID to be a very effective measure in preventing drunk driving. If the individual fails to make the sensible calculation of possible costs and benefits, the IID essentially does the calculating for the person – it judges whether the costs of an individual driving are too high, and bars him from operating his vehicle if they are. Rather than relying on a friend to take away the keys or drive an intoxicated person home, the IID disallows the driver from making an uncalculated decision.

But there may also be a correspondent problem. If the drunk driver lacks self-control and fails to think actions through to possible ends, then it may be that the drunk driver has no qualms about driving a different car, getting someone else to blow into the IID, or otherwise violating the conditions of the IID agreement. In short, assuming that a person needs an IID because of lack of self-control also admits the possibility that he will not conform to the restrictions that the IID imposes. This possibility is addressed later in the review of research.

Empirical support for the self-control hypothesis

Keane, Maxim, and Teevan’s experiment – “Drinking and Driving, Self-Control, and Gender: Testing a General Theory of Crime,” *Journal of Research in Crime and Delinquency*, v. 30.

This team of scholars, working in Canada, attempted to assess the ‘self-control’ theory of crime mentioned above.

The data used was the 1986 Ontario Survey of Nighttime Drivers. In this project, surveys and breath tests were administered at nearly 300 locations across the province. The survey focused on the highest risk time periods for drunk driving, 9 pm to 3 am Wednesday to Saturday. Drivers were pulled over, asked to complete a survey, and asked to submit to a Breathalyzer. No arrests were conducted with the survey, and consequently only 3.4 percent of drivers refused the BAC test.

This study cleverly developed a measure of ‘self-control’ and ‘high-risk behavior.’ Drivers were asked in the survey ‘Out of 100 legally impaired drivers on the road, how many do you think will be stopped by the police?’ (p. 34) Presumably, if the driver thought many would be stopped but drove drunk anyway, then he was aware of the danger but simply failed to exercise the requisite self-control. Also, drivers were questioned as to whether anyone had tried to discourage them from drinking. Similarly, if they had been dissuaded and drove with a prohibited BAC anyway, then this can be seen as a lack of conformity to social norms.

The researchers concluded that, in fact, the self-control theory of crime quite well explained drunk driving. People wearing seatbelts had significantly lower BAC levels than those who did not; people who had been asked by a friend not to drive were more aware of their intoxication but drove anyway. People who thought police would stop more drunk drivers actually drank more than those who thought police would stop fewer. That is, generally, measures of impulsiveness and resistance to social constraints were significant independent variables in predicting whether or not an individual would drive with a prohibited BAC. Drivers were aware of what they were doing, and proceeded in spite of the consequences.

Explaining alcoholism and substance abuse

A distinction has been made between the recidivist and the majority of drunk drivers. The summarized response of focus groups and interviewees in the Alternatives to Incarceration study was that 'one cannot attack the problem of repeat drunk driving without attacking the offenders' need for alcohol.' As such, some theories of alcoholism will be examined to better understand the pathology of the alcoholism as it relates to driving.

A prevailing sociological theory posits that alcoholism and substance abuse generally emerges from an individual's inability to achieve the goals that society values most highly. Because many people do not have the means to achieve wealth, esteem, or security, the use of alcohol and other drugs allow them to either reject these norms by joining a group with different values, or to alter one's perception of societal position (hence the often observed notion that people feel sexy or powerful when drunk). Moreover, this theory of dissonance fits with theoretical explanations of criminality. Crime can quickly and superficially grant the individual wealth, esteem, or security, or at least it appears to. A commonly cited study on the criminality of drunk drivers revealed a strong correlation between OWI arrest and prior perpetration of non-traffic crimes (Argeriou et al 1985).

The intractable problem is that many theories exist, and no theory fully explains alcoholism; rather, each has some empirical support, and some explain certain situations better than others. Alcoholism (and substance abuse and addiction generally) is characterized by being very clearly identifiable but stubbornly difficult to resolve.

This pertains to IIDs when considering what incentives and reinforcements (if any) IIDs are exerting upon the offender. For example, one might hypothesize that an IID might exert a shaming influence, altering the recidivist's behavior in ways that fines and license points may not. However, within the framework of alcoholism as a method of coping with alienation from society, the alcoholic might see the IID as simply one more way in which figures of authority are belittling or misunderstanding him.

Law and the purpose(s) of criminal punishment

The previous section discussed the complication in establishing a scheme of *retribution*. Retribution is simply the eye-for-an-eye method of punishment that does not look at long-term effects: a person is punished for doing wrong, in direct correlation to the acuteness of their action. When a person kills or injures someone while driving drunk, the recourse can clearly be harsh. But when someone is pulled over and *prevented* from harming himself or herself or anyone else, it becomes hard to say what the severity of their crime is.

The other three purposes of criminal punishment are *reform*, the alteration of an offender's behavior; *incapacitation*, rendering the offender unable to perpetrate another crime; and *deterrence*, implementing a firm enough penalty as a disincentive to committing the offense.

Deterrence, in the context of drunk driving, has two separate meanings. There is *general deterrence*, aimed at keeping the population from engaging in risky behaviors. Examples of this are the public relations campaigns focused on seatbelt use and speed enforcement. The other category is *specific deterrence*, focused on the driver who has already committed an infraction and is seen as likely to do so again. IIDs are a more sophisticated form of specific deterrence, compared to enforceable but often ineffective measures such as license revocation.

IIDs are an attempt to mix all four purposes together. The driver receives retribution in the invasiveness of the IID, hampering an activity that he was entitled to beforehand; it tries to change his behavior by reinforcing sober driving and censuring drunk driving; it incapacitates when the driver is over the threshold; and it deters by its omnipresence.

The IID does all of these things in theory. The empirical question is whether it *actually* does any of these things. General deterrence is rarely addressed and unlikely, since public awareness of IIDs and their uses is quite limited. Empirical evidence suggests that reform is not likely via IIDs. Retribution is also dubious, due to implementation problems discussed later in this report.

Chapter Two: Description of Ignition Interlock Devices

What is the IID?

An IID is a breath alcohol test instrument mounted in an automobile, designed to allow a vehicle's ignition switch to start the engine only when a driver's breath alcohol concentration (BrAC) is below a predetermined alcohol set point. When the BrAC is at or above the alcohol set point, the device prevents the driver from starting the car. In Wisconsin, that alcohol set point is 0.02 g/210L. While several manufacturers in the United States produce IIDs, only three devices are currently approved for use in the state: semiconductor models produced by Guardian Interlock Systems and Lifesaver Interlock, Inc. and a fuel cell device manufactured by Consumer Safety Technology (CST). The IID is approximately hand-sized. Pictured below are several IID models:





Exactly how does the IID work?

When a driver enters a vehicle, he is prompted to give a breath sample by cues from the device. In the winter, the device may take a few minutes to warm up. To ensure that the sample is not created by mechanical means, some IIDs require a particular breath pattern to be followed; others measure the driver's breath temperature. A recent Pennsylvania study noted that the correct pattern of blowing/sucking/humming was one of the primary obstacles to proper IID use (USA Today 13 January 2003).

The device immediately displays a pass, fail, or inadequate sample reading. Passing allows the car to be started immediately. Three successive failures locks the ignition. The inadequate sample reading is caused by not providing enough air, stopping in the middle of the process, or failing to blow/suck/hum in the correct manner. If an inadequate sample is drawn, the device prompts you to try two more additional times.

The driver has three chances to provide a valid sample. If he fails to do so, the IID records a violations reset, requiring the driver to return the unit to the service provider within seven days or risk permanent lockout. When the driver successfully provides a sample below the set point, the car can start. Five minutes after ignition and then randomly in 5-30 minutes increments, the IID will request additional breath samples, called *rolling retests*. Rolling retests are designed to remove the possibility of a sober friend from assisting an intoxicated driver – the drunk driver cannot get far. Three consecutive refusals to provide a rolling retest, or three breath tests over the set point will start the horn honking and emergency lights flashing. This continues until the driver turns off the ignition, immobilizing the car for 15 minutes. This event, or any attempt to tamper with or subvert the IID, is recorded in the IID as a violations reset, requiring the driver to bring the IID in for service.

Routine service is required every 60 days, and failure to service will lead to a permanent lockout. Seven days prior to the service deadline, the driver sees or hears a reminder from the IID. At the servicing, stored unit data is downloaded and reviewed, device accuracy is checked, and a tampering inspection is performed.

How well do IIDs work – accuracy?

An IID is designed to perform in the relatively adverse environment of an interior of a car. The device is subjected to more difficult conditions than other law enforcement breath testing devices. The IID accounts for the imperfect conditions of a car's cabin by allowing the driver three chances to provide a valid breath sample.

The DSP Chemical Test Section is required by WI Trans 313 to evaluate and approve all IID used in the State. This evaluation is designed to test the performance claims made by the manufacturers, and to ensure the devices work as promised. The Section evaluated IIDs with fuel cell technology. Existing semiconductor technology is subject to interferences by non-alcohol compounds, which may result in false positives and is no longer state-of-the art technology. One fuel cell models has met the Section's standards. The Section is continuing to work with manufacturers to identify fuel cell IIDs that meet statutory requirements for performance, and is hopeful that additional fuel cell models will be available to drivers within the year.

How well do IIDs work – security and tampering?

At first glance, the IID sounds rather easy to circumvent. If one has to blow into a nozzle to start the car, there appear to be several easy ways around this requirement. Have a friend blow into the IID; inflate a balloon before you drink and attach it to the device; keep some sort of hand pump around to trick the IID.

However, there is a statutory requirement that any IID approved for use in Wisconsin institute *rolling retests*. That is, five minutes after you have started your car, the IID requires another breath test. Moreover, the IID continues to require retests every 5-30 minutes, obviating any chance that a friend or stranger could assist a drunk driver in getting very far.

As far as mechanical methods of tricking the IID, the current generations of IIDs are too clever for that. Some require the user to hum while breathing into the unit; or the IID is sensitive to the temperature of the air being tested, so that cold air from a pump or balloon will result in an aborted test.

Although, someone with sufficient technical knowledge could remove the IID while still allowing the car to start, this tampering information is instantly recorded in the IID, and will be transmitted to the vendor at the servicing time.

Anecdotal evidence suggests that subversion of the IID mechanism is uncommon. But the more pressing issue is not subverting the device, but avoiding IID use altogether.

Why Ignition Interlock Devices?

Who is the IID protecting? Is it a tool to help a recidivist drunk driver alter behavior in the future? Are IIDs implemented to protect the public from the indiscriminate danger that drunk driving presents to passengers and other motorists?

Does disallowing him the means to perpetrate another crime help the recidivist driver? This sort of ‘paternalism’ is widely practiced in varying degrees within the government; a simple example is providing tax incentives via IRAs to encourage retirement savings. IIDs can be seen as a way to help people make better, safer decisions by introducing a new incentive.

With drunk driving, though, the concern is more often for the public at large. The drunk driver continually distinguishes himself as an indiscriminate threat to anyone in his vicinity, including non-drivers. Thus the IID is really more of a public safety measure: the driver is removed from endangering other drivers when he is deemed unfit to operate a vehicle. Put another way, when the driver drinks, the state rescinds the driver’s privilege to use the public goods (roads) because of his breach of a social contract.

Finally, the IID can be seen as a cost-effective utilitarian program. Incarcerating recidivist drunk drivers, while highly effective at keeping them off the road, is inordinately costly, especially in an era of burgeoning criminal caseloads and scant jail space. Since the cost of the IID is borne by the participant, it could be a good deal for the state in terms of saving lives and jail space via the use of technology. Incarceration for drunk driving is declining nationwide, largely due to its expense (feeding, supervising, and housing the offender) and dubious long-term benefits.

Who pays for IIDs?

It is important to note that when an offender receives a court order for IID installation, *the offender is required to pay for the installation and the monthly maintenance fee*. The total cost for one year of IID use can be close to \$1000: about 120 dollars for installation and a 70-dollar monthly service fee. This cost has two direct implications in our evaluations. First, most IID orders in Wisconsin are not complied with (see Figure 8); a significant cost to the driver, along with limited sanctions for non-compliance, could be a contributing or even defining factor in this non-compliance. Secondly, due to their cost, IIDs may be assigned to higher income individuals. If that is the case, and IIDs work, then bias may exist: IIDs succeed not because of the device, but because the sample has greater resources for other treatment, taxi rides, or a second automobile.

Is the cost of IIDs prohibitive? At first glance, \$1000 dollars a year is a large sum for almost anyone. Moreover, the data shows that IIDs are usually assigned to middle-aged working-class men, for whom this amount may be burdensome. However, having an IID also creates an offset. One estimate in southern Wisconsin suggests that the repeat drunk driver spends, on average, \$1500 annually drinking at his favorite tavern or restaurant (Anthony 2003).

How IID law developed – federal and state laws

In 1993, the federal government instituted federal repeater requirements, where states were required to sanction drivers with three or more drunk driving offenses. In response, Wisconsin Act 277 created IID license and approval processes within the state, and required IIDs or some other sanctions in certain repeat offender circumstances. Initially, an IID was an option only for third or subsequent offenders: the judge could choose between vehicle seizure, vehicle immobilization, or an IID. The fourth federal sanction, registration suspension, was not implemented in Wisconsin.

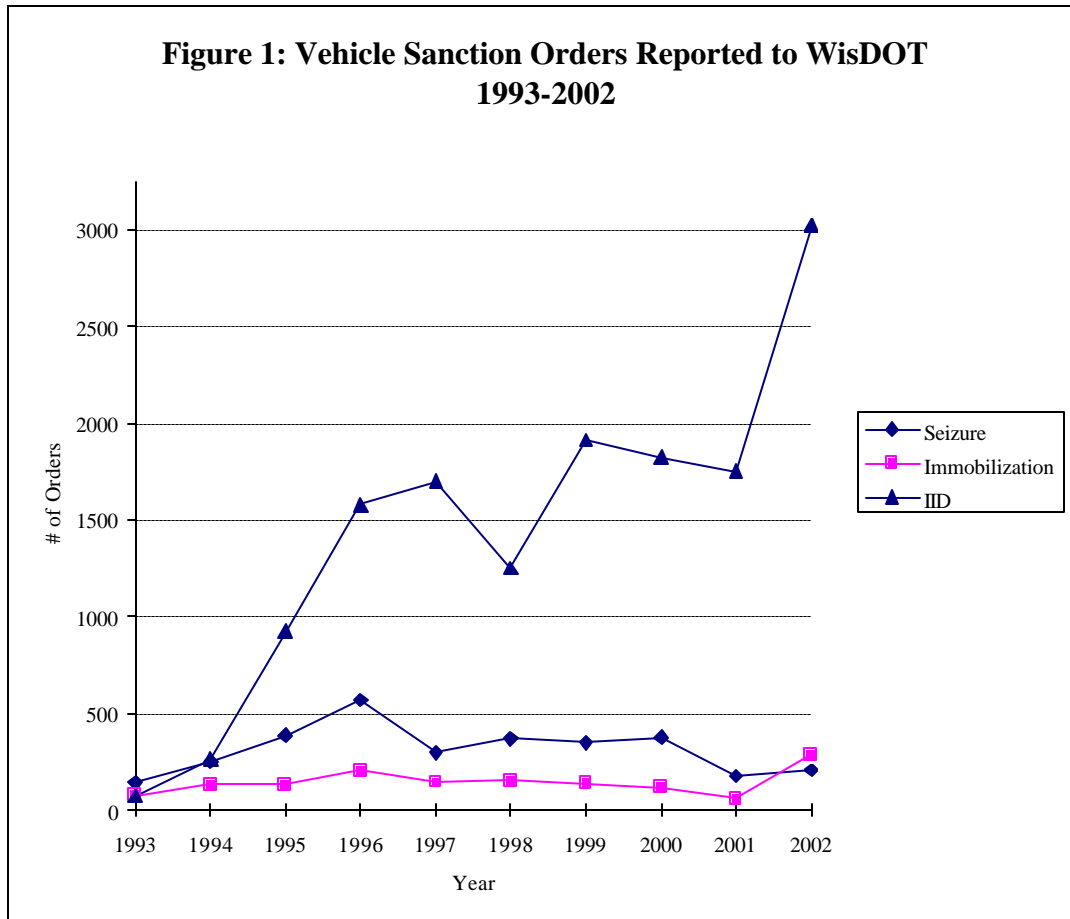
In 1999, Act 109 was passed, an omnibus bill that changed the statutory scope of IIDs. For the first time, the IID became an option for second offenders, at the discretion of the court. Since second offenses are more numerous than all third and subsequent combined, this change greatly broadened the scope of IID use. IID orders jumped 73 percent in 2002 from the year before. Also, the IID license restriction was changed to a person's driving privilege, rather than to a particular automobile.

An important change was recently made at the federal level regarding IID use. Under the Transportation Equity Act for the 21st Century, second and subsequent offenders have their licenses revoked for a year. After that year, the license is reinstated with either an IID or an immobilization order on their vehicle. This is a crucial point: the literature review finds that IIDs are most effective in the year immediately following arrest and conviction for OWI. By mandating a one-year waiting period, this law may reduce IID efficacy. Also, the federal repeater standards require that if two OWI offenses take place within a five-year period, the offender must receive either an IID or seizure. These changes were incorporated into Wisconsin law in 2001 Act 16, another omnibus budget bill.

Currently, the law offers IIDs at the discretion of the judge for second offense Operating While Intoxicated convictions. For third or greater offense, the court *must* mandate one of the following: an IID; vehicle immobilization; or vehicle seizure. As shown in Figure 1, IIDs have far outstripped the other options in terms of court orders.

Also, IIDs are continuing to grow in popularity. *From 2001 to 2002 IID court orders increased almost 75%.* Seizure and immobilization have proven to be difficult to implement. Because of a lag time between a seizure decision and carrying out the seizure, offenders have been very wise about getting rid of a nice car and acquiring a junker. Thus the state was spending more money seizing vehicles than it was reaping from their sales. Similar problems exist for immobilization. Also, immobilization is seen as a harsher treatment than IIDs, since the latter allows non-impaired driving while the former creates hardship by rescinding driving privileges altogether.

Finally, IIDs are especially attractive to a financially constrained state. Seizure has often proven to be an ineffective use of law enforcement resources, and immobilization can also be costly. Requiring the offender to pick up the tab on the IID (effectively paying for the privilege of driving) looks like a good deal for the state.



Chapter Three: IID Research, the Wisconsin Experience, and the National Experience

The Commercial Element of IIDs in Wisconsin

The ignition interlock device did not develop in a vacuum. The selling, marketing, and servicing of IIDs are an industry. Below are a series of maps: Figure 2 shows the 10 most populated counties of Wisconsin. Figure 3 shows the 10 counties with the highest IID caseloads; unsurprisingly, 9 out of 10 of these are identical to the most populated counties, which probably have the most cars, drivers, and miles driven. Figure 4 shows the 10 counties with the most IID orders in 2002, which do not match nearly as closely with the first two maps.

Figure 2: Highlighted Counties indicate 10 most populous (2002 adjusted census)

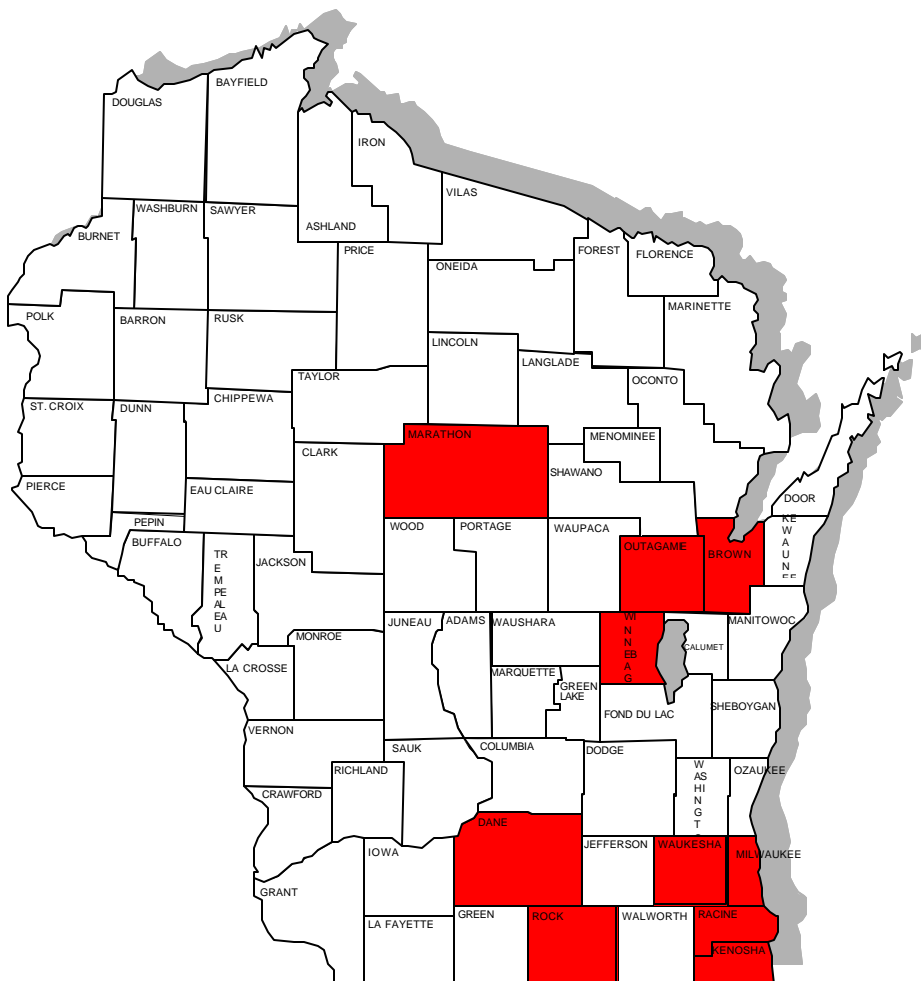


Figure 3:
Highlighted Counties indicate 10 most repeat OWI
convictions (2001 Alcohol Traffic Facts)

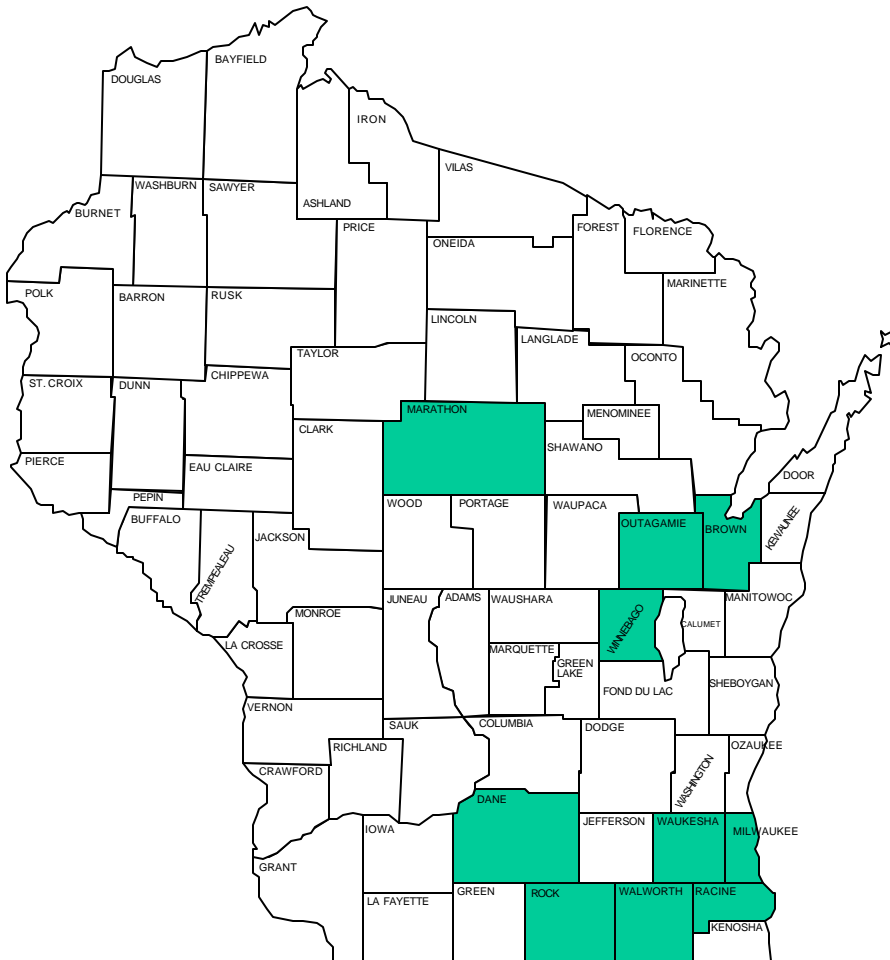


Figure 4: Highlighted Counties indicate most IID orders

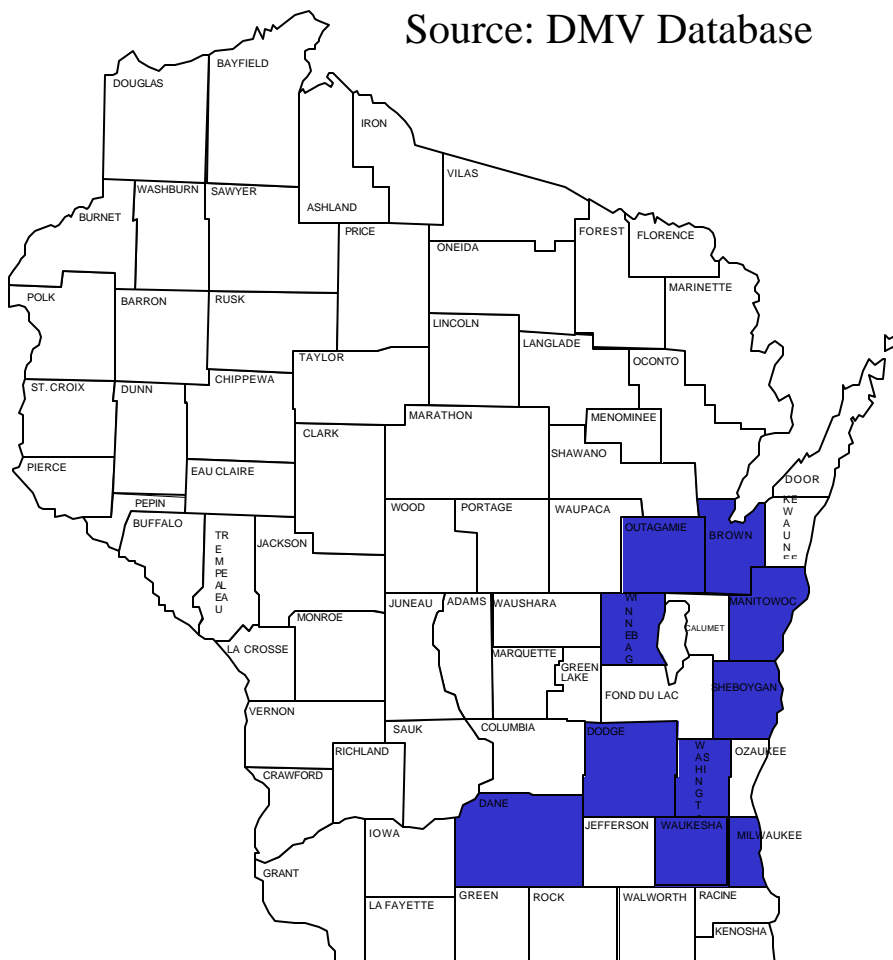


Figure 5: Comparison of Most IID Orders, Repeat OWI Convictions, and Population By County for 2002 (Convictions Use 2001 Data)			
	Most IID orders	Most repeat OWI convictions	Largest population
1	Milwaukee	Dane	Milwaukee
2	Waukesha	Milwaukee	Dane
3	Winnebago	Waukesha	Waukesha
4	Outagamie	Brown	Brown
5	Dane	Winnebago	Racine
6	Sheboygan	Outagamie	Winnebago
7	Washington	Rock	Outagamie
8	Manitowoc	Marathon	Rock
9	Brown	Racine	Kenosha
10	Dodge	Walworth	Marathon

The maps suggest that IIDs are used more robustly in areas closer to the largest IID distributor. The largest IID installation center is in Appleton (Outagamie county) and the third map (most IID orders) reveals a clustering around Lake Winnebago. In fact, aside from the three counties with by far the largest populations (Milwaukee, Dane, Waukesha respectively) the other seven of the top ten IID order counties surround that Lake Winnebago area. Contrastingly, in terms of distribution of population and OWI arrests, the counties are spread further.

One of the avenues to be investigated further is whether the assignment of IIDs is biased – that is, do proportionally more IIDs go to low-income drivers, younger drivers, minority drivers, etc. Bias is an issue for two reasons: firstly, for the sake of judicial fairness; and secondly, for the construction of a fair IID study. If more IIDs are assigned to higher-income drivers (as some research suggests, perhaps not surprisingly given the cost of IID implementation) then it may be difficult to separate the success of the IID from the initial advantage of having more income. This problem of *selection bias* is addressed elsewhere in the paper.

From the data on IID orders by county, there is the possibility of *geographic bias* – that a person in a county closer to an IID vendor is significantly more likely to have an IID ordered. These maps are not intended to provide conclusive evidence of a geographic bias. But the data does suggest that in collecting qualitative and quantitative data, close attention should be paid to whether IIDs are assigned consistently.

IIDs are probably not assigned uniformly. Experiences with other drunk driving issues show that the size, wealth, and political orientation of the county exert varying effects on how OWI arrests are dealt with. It would surprise some to know that while arrests may (or may not) be conducted similarly, OWI convictions are much more difficult to attain in some counties than in others.

Some reasons for differential IID implementation are immediately obvious. Firstly is the issue of awareness and marketing. IIDs are not a uniformly known entity, among the judiciary or law enforcement, let alone the driver. Where a vendor is nearby, he or she is able to introduce his product to the court system.

Secondly, there is a geographic problem. IIDs are still new, and vendors are concentrated in the populous parts of the state. So in areas close to IID vendors, the IID can be ordered without inflicting the additional hardship of long-distance travel upon the recipient. Vendors have statewide servicing with a traveling van, but installation can only be completed at certain centers.

Some authors have likened the corrections/industry connection to the military/industry connection. Indeed, law enforcement can be viewed as simply ‘defense’ on a smaller scale. The relationship between the vendors of IIDs and the court systems should be scrutinized, to ensure the absence of impropriety.

Who Needs an IID?

People often talk about recidivist drunk drivers as though they were a small but comprehensible category. Although recidivism is uncommon, and recidivists are less receptive to traditional measures to combat drunk driving, it would still be a mistake to lump these individuals together. A wealth of research on driving while intoxicated offenders indicates that

“Most programs treat DWI offenders as if they were a homogeneous group. The present results ... suggest that the DWI population is not homogeneous but rather composed of a number of clinically relevant subtypes. Such findings imply the need for differential assessment of personality characteristics of the DWI offender ... The model of differential assessment suggested by the present results potentially would lead to a closer match between DWI arrestees and modes of intervention most appropriate to their particular needs.” (Donovan & Marlatt, 1982, p. 247)

The study quoted here, of course, was done before IIDs had emerged as a law enforcement device. Nonetheless, the point is worth considering.

A number of studies have looked at OWI offenders, administered assessments and written tests, and tried to separate people into discernable groups. Some of these studies identify as many as ten subgroups within the drunk driving sample (sometimes called psychometric categories – see Donovan & Marlatt 1982). In general, the passive/introvert/depressive type and the aggressive/extrovert/irritable type stand out. Also, while most OWI repeat offenders are working-class males in their late thirties and early forties, there exists a distinct subgroup of older businessmen and professionals who habitually re-offend. These types are worth considering in an assessment, because they may respond to sanctions and treatments differently.

The Framework in which IIDs operate

Dealing with alcoholism and its many side effects such as drunk driving can be frustrating. IIDs, like many other state programs, address alcohol after it has become a large part of an individual's life. Alcoholics Anonymous, group dynamics counseling, therapy, license revocation, and IIDs are all measures that are implemented after a person has developed a problematic relationship with alcohol. Our assessment of IID hence compares IIDs to these traditional tools and sanctions. However, it is difficult to evaluate how useful IIDs are compared to preventative measures.

An excellent paper by Nichols and Ross examines the prevailing options for dealing with OWI offenders. The review of literature finds that:

- Jail sentences are generally too expensive and have a minimal long term rehabilitation effect (they do sometimes have a deterrent effect, as mentioned earlier for first-time offenders – however first time offenders cannot receive jail time in Wisconsin),
- Fines are ineffective, often go unpaid, and have little deterrent or rehabilitative effect,
- License revocation works – although drivers certainly continue to drive without a license, the bulk of the evidence shows that they drive slower, are involved in fewer crashes, and drive less at high-risk times. Also, license revocation is affordable and easily administered.

The Wisconsin OWI Process

Figure 6 shows the change in OWI penalties from May 1, 1991, compared to the law as of January 1, 2003. The introduction of the IID specifically and vehicle sanctions generally is perhaps the *principal statutory change* in OWI law in the last decade.² The other major shift is a rule change dictating that drunken driving offenses are now counted for the lifetime of the driver, starting January 1, 1989. Otherwise, fines, jail time, license suspension, and assessment have all remained almost exactly the same. The notable exceptions are steeply increased fines and possible prison time for fifth or greater OWI offense, but this affects only a small segment of the drunk driving population.

² This report was written *before* passage of 2003 Wisconsin Act 30 which changed the *per se* Blood Alcohol Content (BAC) for first offense OWI. The new law, which was implemented beginning on 9/30/03, changed the prohibited BAC from 0.10 to 0.08 and above for first offense OWI.

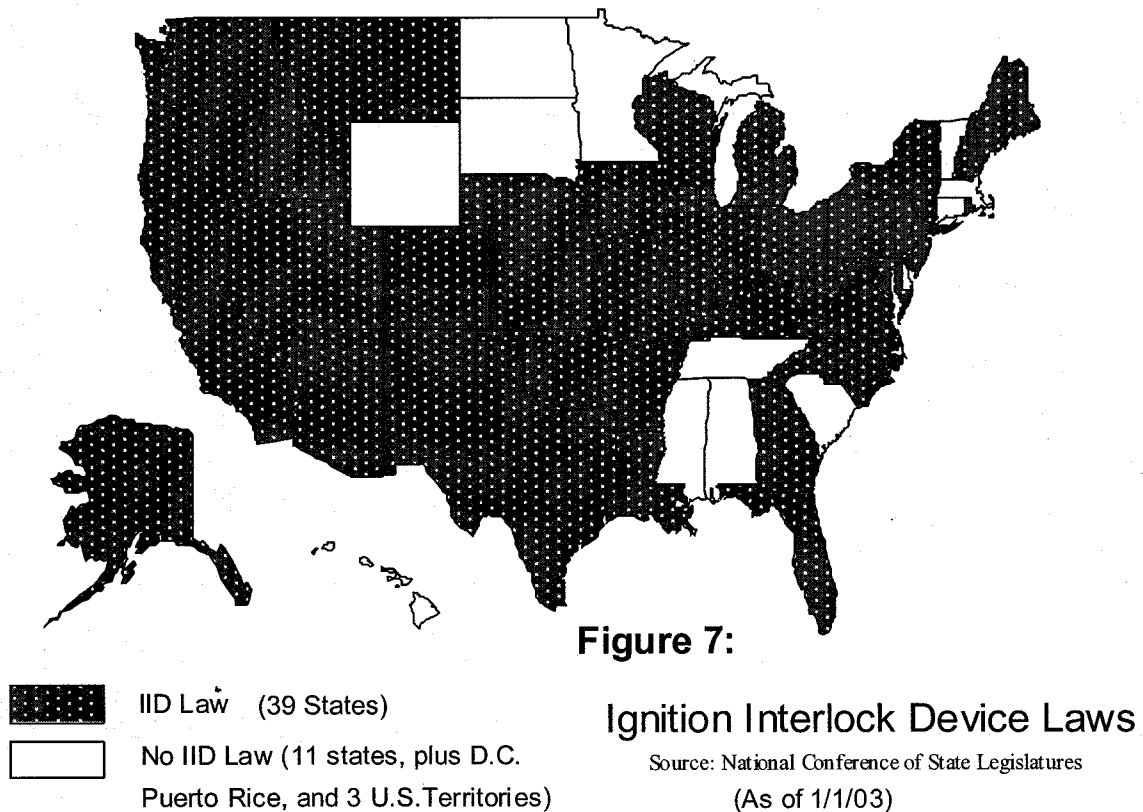
Figure 6: Changes in Wisconsin OWI sanctions, 1992-2002

	Fine	OWI sur-charge	Jail time	Length of license suspension	Vehicle Sanctions	License points	Assessment requirement
Number of OWI Convictions							
1	No change	Raised \$105	No change	No change	No change	No change	No change
2	Minimum raised \$50; maximum raised by \$100	Raised \$105	No change	No change	<i>Optional IID, seizure, or immobilization</i>	No change	No change
3	Minimum unchanged; maximum raised by \$800	Raised \$105	No change	No change	<i>Mandatory IID, seizure, or immobilization</i>	No change	No change
4	Minimum unchanged; maximum raised by \$800	Raised \$105	No change	No change	<i>Mandatory IID, seizure, or immobilization</i>	No change	No change
5 or more	Minimum unchanged; maximum raised by \$8800	Raised \$105	Min. unchanged; maximum raised by 5 years (Class H Felony)	No change	<i>Mandatory IID, seizure, or immobilization</i>	No change	No change

The national experience with IIDs

As of January 1, 2003, thirty-nine states had IID laws on the books. IID technology is new, and few states had the device in place prior to the 1990s. But IIDs have become widespread across the United States, Canadian provinces, and Scandinavia.

Comparatively few states have conducted assessments of their IID programs, and some that have experienced brief or narrow measures of success and failure.



The law of drunk driving

“Over time the drunk driving laws have become even more preemptive. The law now punishes a driver for operating a vehicle while his BAC exceeds a certain level – this regardless of whether the driver could pass a field sobriety test, much less whether he is driving competently. In effect, the law makes it an offense to drive while possessing a physiological characteristic that correlates with the inability to pass a test that itself correlates in turn with unsafe driving.”

James Jacobs, Drunk Driving: An American Dilemma, p. 61

The law of drunk driving is curious, because it is quite inconsistent with other parts of criminal law. The law is preemptive: it defines the crime before it has been committed. A comparison is made to a concealed weapon law: the person with a concealed gun has not yet harmed anyone, but society has chosen not to wait until he does. Instead, the state acts to forestall the potential crime. So why is drunk driving a crime, or why is it so severe a crime?

Jacobs ties drunken driving to the development of the concept of reckless endangerment, first explicitly set forth under the Model Penal Code in 1960. Clearly, driving while intoxicated is an endangerment in the public realm. So is speeding, weaving, failing to signal, and ignoring a stop sign, and it is this same argument that extends to attempts to make talking on a cellular phone while driving a crime.

Should the line be drawn at a certain BAC level, or should the line be drawn based on actual behavior on the road? Jacobs's line of thinking is useful to think about why IIDs exist, and what is expected of them. The decision to have a certain BAC level as a threshold (.02) permits the driver a certain level of impairment that is not criminal. This distinction is common, but it is not universal: in Norway any non-zero BAC level is criminal.

The issue of compliance

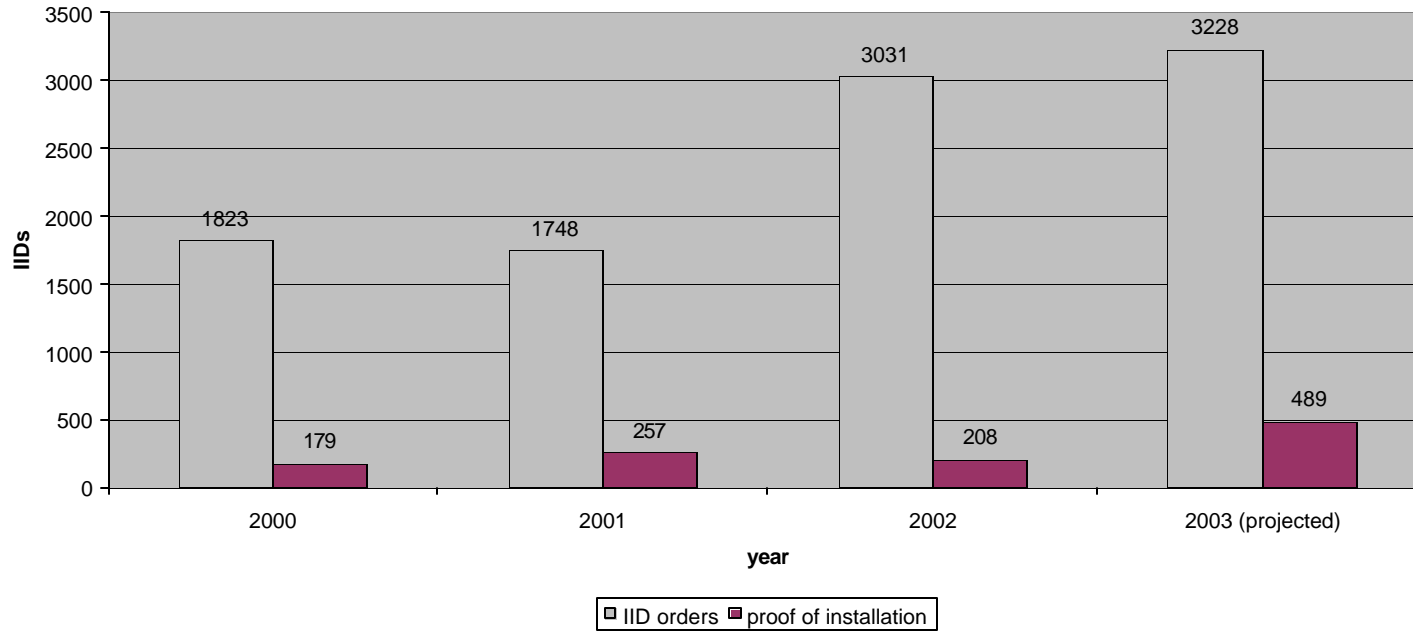
The main defect of the current IID law is shown in Figure 8. It appears that the implementation of law, from the court order to actual installation, is extremely loose. Most drivers receive the court order, and simply never comply. Their license is restricted, but limited knowledge about IIDs and infrequent interaction with law enforcement means that failure to heed the law is rarely punished.

In addition, compliance with the IID order requires *reinstatement* of the operating privileges. Drivers often continue to operate under a revoked status, which may or may not be related to the IID requirement, but could also involve other issues as well. Operating under revoked status can result in another serious charge, Operating After Revocation.

Also, as mentioned in the previous section, the state would like to achieve maximum results without committing too much officer and court time to drunk driving. This is why time and money is spent on preventative measures (in the form of public relations campaigns) and why the IID seems like a probable solution. *But without resources for IID compliance, the program will have limited success.* And this is indeed what the numbers below suggest.

Here, it is useful to think about the utilitarian behavioral model. Although this does not apply to the *act* of drunk driving, it can certainly apply in other areas of life, particularly potentially expensive choices. The cost of complying with the court order is high, probably higher than the potential cost of not complying, considering the low possibility of being caught.

Figure 8: Comparison of IID court orders to IID compliance, 2000-2003
2000-2002 compliance manually reported; 2003 compliance automated
2003 annual numbers projected based upon January-April tabulations



The real application of IID law

Application of IIDs is variable, depending on a judge's outlook and awareness of the technology. The application of the law across the state is not uniform; judges may conform to the letter of the law, but in the case of a second offense when judicial discretion is involved, differences arise. It is important to note that *there is no court situation where IIDs must be implemented*, though they may be mandatory in matters of license reinstatement. There are only situations where some sanction must be implemented, and an IID is one of few options. IIDs are typically seen as the best sanction, although clearly circumstances can still dictate that seizure or immobilization would be preferable.

Some judges have attempted to prescribe the IID for problem drivers who were not convicted of alcohol-related offenses, but whose patterns of offense suggest that drinking may be a factor. In *State of Wisconsin v. Darling* (143 Wis.2d 839 (Ct.App. 1988)) an appeals court maintained that a court could not order the driver's occupational license restricted to prohibit operation of a motor vehicle within 12 hours of drinking alcohol. By extension, the court probably lacks the authority to impose an IID where the statute does not present the option.

Looking at Figures 9, 10 and 11, IID use fits with the general recidivist drunk driver profile. Most drunk drivers are men aged 30-44, and so are most IID recipients. The geographic distribution of IIDs around the state shows a high proportion in the northeast and southeast, re-emphasizing the issue of geographic bias that was mentioned earlier.

Figure 9

ID court orders by gender, Calendar year 2002
Source: DMV Database

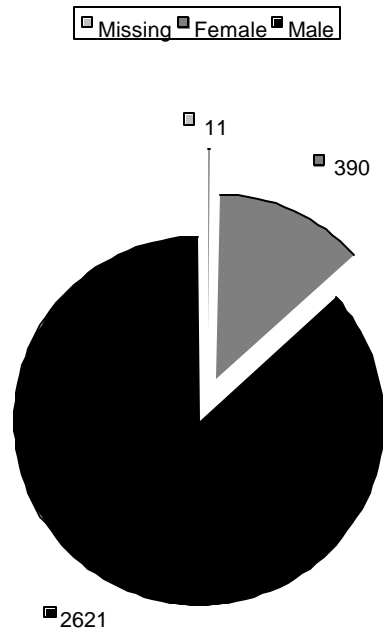


Figure 10

IID court orders by age category, Calendar year 2002: Total orders = 3022
Source: DMV Database

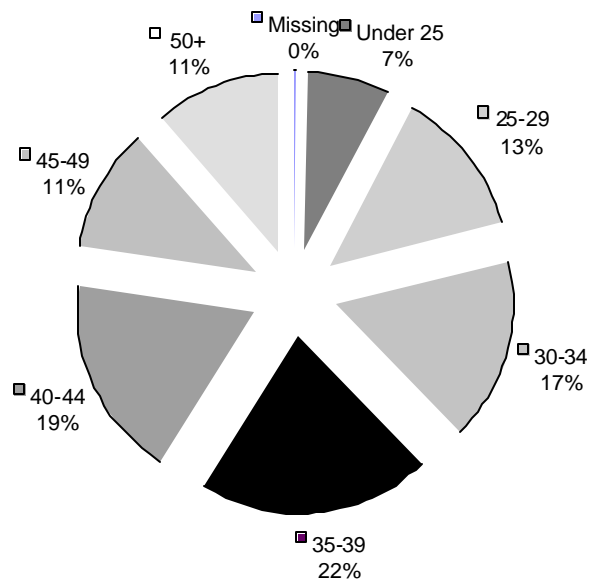
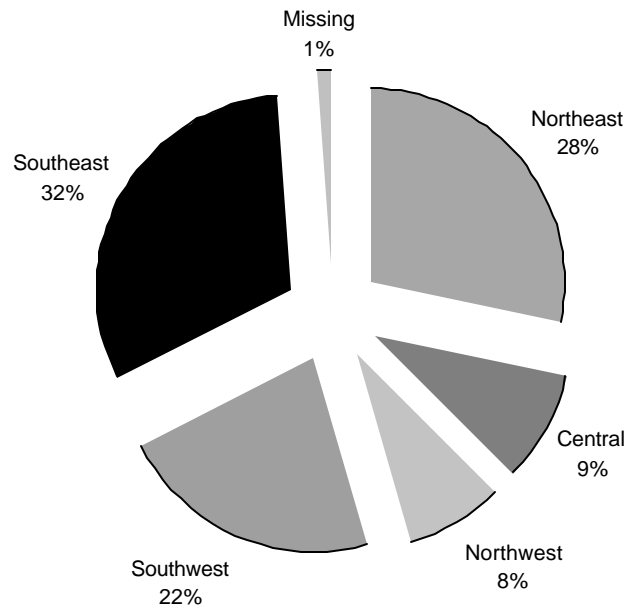


Figure 11

IID court orders by Region, calendar year 2002, total orders = 3022
Source: DMV Database



Regional definitions by county:

Northeast: Marinette, Oconto, Menominee, Shawano, Outagamie, Winnebago, Calumet, Sheboygan, Manitowoc, Brown, Kewaunee, Door.

Southeast: Fond du Lac, Waukesha, Washington, Ozaukee, Milwaukee, Racine, Kenosha, Walworth.

Central: Iron, Vilas, Forest, Florence, Price, Lincoln, Oneida, Langlade, Marathon, Wood, Portage, Waupaca, Adams, Juneau, Waushara, Marquette, Green Lake.

Northwest: Douglas, Bayfield, Ashland, Burnett, Washburn, Sawyer, Rusk, Barron, Polk, St Croix, Pierce, Pepin, Dunn, Eau Claire, Chippewa, Clark, Taylor.

Southwest: Buffalo, Trempealeau, La Crosse, Jackson, Monroe, Vernon, Richland, Crawford, Grant, Iowa, LaFayette, Sauk, Columbia, Dane, Green, Rock, Dodge, Jefferson.

Regional groupings are based upon WisDOT program manager regions.

How is the IID implemented?

When IIDs were put into law in 1993, much of the specifics were left to the Department of Transportation. In turn, the DOT developed Ch. Trans 313, an administrative rule that is currently undergoing minor revisions. The rule stipulates relevant details not covered by statute, including that IIDs approved in the state must record the date and time of each test, any attempt to subvert the device, and the BAC level from each test. This data collection may be useful in constructing an empirical study of IIDs.

Research on vehicular sanctions: a contentious subject

Because IIDs have only recently become available as a sentencing tool, much less data and research exists on their efficacy compared to other, more straightforward methods of drunk driving deterrence such as license revocation. Nonetheless, a literature has emerged in scholarly journals such as Addiction, Crime and Delinquency, and the Journal of Drug Issues that addresses whether or not IIDs work.

Research on IIDs attempts to answer the basic question of whether IIDs work. Again, there is the need to define the terms of success. Different researchers define IID effectiveness differently. Generally, though, studies focus on whether IIDs have any *long-term* effectiveness in preventing either drunk driving or broader reckless driving behavior. Since IIDs are a temporary measure, they are often compared with other short-term provisions such as license suspension.

What follows is not an encyclopedic discussion of the writing on IIDs. These are some of the relevant and conclusive studies that have been conducted. For more research on IIDs, please see the bibliography at the end of this report.

Research on IIDs

Morse and Elliot's experiment

“Effects of Ignition Interlock Devices on DUI Recidivism: Findings from a Longitudinal Study in Hamilton County, Ohio.” *Crime & Delinquency* 38:131-57

One of the first program evaluation efforts was conducted in the Cincinnati area (Hamilton County, Ohio) in the late 1980s, when IIDs were essentially brand new (Morse and Elliott, 1990). The study selected as eligible participants three groups: recidivists; anyone arrested with .20 or higher BAC; and offenders who refused a BAC after arrest. The judge, who had the option whether or not to offer a reinstated license with IID, or simply to revoke the license of the offender, made the first cut of decision. Secondly, the offenders who were offered the device chose whether to accept an IID, or refuse it and accept a license suspension instead.

Next, extensive data was collected on demographic identifiers, court reports, and prior arrests, and assessment interviews were conducted with participants, both those with and those without IIDs (the test and control groups). The characteristics were compared to see if there was a bias by judges in offering the IIDs. Were IIDs offered more frequently to women, white people, wealthier people, people with cleaner driving or arrest records? If judges consistently offered the option to one group much more than another, then the study would be hard to conduct.

The problem that concerns the researchers is *selection bias*, an issue that affects much of the research on IIDs. Plainly, if IIDs are more frequently offered to a particular group – harder drinkers, less affluent people, married people – then it is very difficult to separate the effects of the IID on recidivism from the effects of being an alcoholic, poor, or having more family support on recidivism. But Morse and Elliot found that there was great consistency in judges' offerings across age, race, class, and marital status. Judges were more likely to prescribe the IID for repeat offenders than for first-time offenders. This focus on the recidivist mirrors how the IID law has been implemented in Wisconsin.

However, a second type of selection bias was possible in the second cut. Were the individuals who installed the IID different from those who did not? The researchers found that ‘those who accepted were more often white, working-class males with substantially higher incomes’ (Morse and Elliot 1992: p. 144). Given that the participant must pay for the cost of the IID, this comes as no surprise. Still, if IID participants have systematically higher incomes, then it can be hard to separate the success of IIDs from the ‘head start’ of greater financial security.

Conclusions

The metric of measurement in this study is simple and limited. The authors investigated the survival rate, that is, the percentage of participants who had completed a time period without an OWI re-arrest. They concluded that drivers with IIDs were almost three times less likely to re-offend over a 2.5 year period. This was the first large-scale program evaluation study of IIDs, and it concluded that the devices were promising and achieved the desired results.

Although the study is optimistic, it is one of the first attempts at evaluation and is not without its flaws. Firstly, it makes no prognostication as to long term benefits (more than 2.5 years) from IID implementation. In fact, the charts clearly show that while survival rates diverge noticeably over the first year, there is little effect after the first year. This confirms a hypothesis put forth by other researchers: that the first year after OWI convictions constitutes the highest risk period for re-offending.

This study also raises the question of what IID success really means. If there is one thing that IIDs provide, while they are installed, is a very small chance of re-arrest for OWI because it becomes difficult to drink and drive. However, it should be noted that drivers who drink and drive without IIDs are also frequently not arrested because an OWI arrest is usually the eventual result of dozens of incidents.

Beck, Rauch, Baker and Williams

“Effects of Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses: A Randomized Trial in Maryland.” American Journal of Public Health 89:1696-1700.

These researchers conducted a randomized trial of IIDs in Maryland. That is, multiple alcohol offenders who had had their licenses suspended and were eligible for restricted reinstatement were assigned to one of two groups: either a conventional counseling and treatment program (the control group) or the installation of an IID for one year, with no additional treatment (the test group). The authors stress the importance of *randomly assigning* IIDs to a group of offenders. Using random assignment, the two groups were almost identical in distribution of age, sex, education, marital status, race, and income. They criticize earlier studies for limiting the strength of their conclusions by creating an unfair comparison between IID groups – say, comparing IIDs to no sanction of treatment at all.

The authors are also skeptical of the broad claims made by manufacturers, who often conduct their own studies with their own scientists. The study acknowledges that IIDs are a publicly popular idea, but caution that this does not mean they actually do what they claim.

One conclusion of this study and others is that *the first year after any OWI conviction is a uniquely high-risk period*. Offenders are much more likely to engage in risky behavior

and recidivate shortly after arrest and conviction, compared to several years down the road. It is not apparent why this is the case; but the conclusion is that it is important to 'break the habit' quickly.

IIDs at first appear to succeed in this goal. Beck et al find that during the first year of comparison, IID participants were two thirds less likely than the control group to commit an alcohol traffic violation.

In the two years combined, the IID group still had fewer total alcohol traffic offenses. But in the second year of the study, after the IID had been removed, more drivers from the interlock group than from the treatment group recidivated. In other words, the IID only works when it is on the automobile. It does not correct behavior or reap long-term preventative gains. Moreover, *conventional treatment appears to be more effective in the long-term deterrence of alcohol traffic violations.*

The study was very diligent in assuring that both the control and experiment group complied with the terms of the agreement. If a member of the test group did not have an IID installed within 45 days of the order, their license was revoked again.

In their conclusion, the authors say:

“The results suggest that for certain chronic offenders, interlock restrictions may have to be maintained for longer than 12 months – perhaps indefinitely.” (p. 1699)

While this is a bold suggestion, it does not seem feasible. Since the driver pays for IIDs, requiring an IID in perpetuity places a lifetime financial burden upon the offender. No doubt some would argue that this cost is far smaller than the loss of life or cost to society of dealing with further recidivism by certain drivers. However, in terms of requiring offenders to pay their way, the Maryland study suggests that over a longer period of time, the money would be better spent on treatment and behavior modification programs.

The authors also arrive at a conclusion shared with other researchers: that IIDs are useful for certain types of recidivists, but not necessarily useful to all of them. In effect, our law reflects this differentiation, where a judge may opt for an IID instead of seizure or immobilization, but always has discretion among these three choices. The important point is that IIDs, if they are properly implemented, suit a certain kind of chronic offender, the more incorrigible recidivist who does not respond to other treatments and simply needs to be stopped from harming others.

It is conceivable that a similar study could be conducted in Wisconsin. It might find, like Beck et al, that IIDs work when installed. However, following the course of this study would ignore a very important point that has been mentioned earlier: *the large majority of IID orders are never acted upon.* Copying a study that ensured IIDs installation within 45 days would not be representing the current state of affairs in Wisconsin.

This points to two separate questions about ignition interlock. What the Maryland study aimed to investigate was the question do IIDs work? The researchers designed a scientific study, with firm controls to make sure they were evaluating IID *use*. However, this is different from the question: does the IID law and procedure of Wisconsin work? A study that mandates compliance ignores the fact that outside of the study, compliance is the exception rather than the rule.

These studies provide a template for designing an IID assessment in Wisconsin. The questions are:

- What are IIDs compared against?
- Is the concern the effectiveness of IIDs *per se*, or the effectiveness of IID law and process?

Finally, there is an exceptionally important point regarding new federal law. The study concludes that IIDs work best in the short term, to keep the offender out of trouble during the first high-risk year. *Yet the federal, one-year hard suspension rule (which applies to persons with two, or more OWIs within 5-year period) prohibits the use of the IID in the first year after conviction.*

Raub, Richard A, Roy E. Lucke and Richard I. Wark.

“Breath Alcohol Ignition interlock Devices: Controlling the Recidivist.” Traffic Injury Prevention, 4:199-205. Taylor and Francis, Inc. (2003).

(Abstract)

“This study compares the recidivist rates of two groups of Illinois drivers who had their driver’s licenses revoked for alcohol-impaired driving and who received restricted driving permits. Drivers in both groups had more than two driving under the influence (DUI) actions against their record within 5 years or were classed as level III alcohol dependents. Drivers in one group were required to install IIDs in their vehicles and drivers in the other vehicle were not.

The research found that drivers with the IID were one-fifth as likely to be arrested for DUI during the 1 year the device was installed as compared to the group, which did not have the device. However, once the IID was removed, drivers in this group rapidly returned to DUI arrest rates similar to those in the comparison group. Additionally, the study showed that this voluntary program in Illinois reached only 16% of the drivers who met the requirements for installing IIDs.

Finally, this study found that individuals who were removed from the IID and returned to revoked status continued to drive. Within 3 years, approximately 50% of this latter group were involved in a crash or were arrested for DUI or with an invalid driver’s license.

Conclusions drawn from the study suggest that the IID is effective in preventing continued driving while impaired. However, the large-scale effectiveness is limited since most of the drivers eligible for the device do not have it installed. To have a significant impact, the IID must represent a better alternative to drivers whose licenses were suspended or revoked because of alcohol arrests compared to remaining on revoked status without having the device installed. Finally, the research suggests that, given the rapid return to pre-device recidivism, the devices should remain installed until drivers can demonstrate an extended period of being alcohol-free.”

Weinrath

“The Ignition Interlock Program for Drunk Drivers: A Multivariate Test.” *Crime & Delinquency* 43:42-59.

Weinrath quickly points out the unfortunate fact that underscores most alcohol research: that while certain programs work better than others, no program works unequivocally well. Alcohol-impaired behavior is such an intractable problem that license revocation, AA, counseling; indeed most intervention programs fail most of the time.

As a result, vehicle sanctions, of which the IID is the most prominent, have become popular i.e. not as a program to change alcohol-impaired behavior; but as a tool to reduce the threat that the drunken driver poses to the public and to keep the offender from re-offending during the period of time the IID is installed.

The author examined offenders in Alberta, which has a medical advisory board that decides upon cases of license reinstatement. Using a range of data spanning before and after the passage of an IID law, Weinrath was able to create demographically comparable groups of reinstated drivers: those before the law were reinstated with no restriction, compared with those after the law who were issued IIDs.

Weinrath concluded that IIDs were effective in stopping offenders from drinking and driving, committing any new driving offense, and becoming involved in an injurious collision. He also looked at a sub-sample and found that IIDs worked as well or better for chronic offenders (defined in his study as people who had spent time in jail for driving drunk, which is arguably a clear sign that a person cannot reform their behavior). Examining the period after IID removal, IID users have a slightly better survival rate, that is, completing a given time period without re-offense. However, there was not sufficient difference to conclude that IIDs effect long-range behavioral changes in offenders.

The strength of Weinrath’s study is the broad metric of recidivism, which considers repeat offenses but also casts a broader net.

Jones

“The Effectiveness of Oregon’s Ignition Interlock Program.” Proceeding of the 12th International conference on Alcohol, Drugs and Traffic Safety, 1992.

Barney Jones of the Oregon DMV performed one of the early IID quantitative assessments, presented at the International Conference on Alcohol, Drugs and Traffic Safety. Offenders were given a choice between reinstating early with participation in an IID program, or waiting six months to get their license back. About half opted for participation in the program and the other half (non-participants) opted to wait six months to get their license back. Both groups were compared to a control group where options did not exist.

Jones found that non-participants had lower arrest rates than the control group *during their suspension and afterwards*. IID participants had much lower rates during the program, but re-arrests were similar to the control groups in the post-IID period.

Later researchers have faulted Jones’s methodology, and there are a few mistakes in its conception. But his basic conclusions are quite consonant with later findings. To quote:

“Evidence suggests that the beneficial effect of the IID disappears as soon as the device is removed. Finally, there is evidence of widespread circumvention, in the form of IID program participants illegally operating vehicles with no IID installed” (p. 1460).

Other researchers have found little long-term benefit from IID programs. Jones’s last sentence is noteworthy: it appears that IID participants were eager to get their licenses back. But even though an IID was a condition of reinstatement, many simply took the reissued license and drove different vehicles. Jones concedes that police are not properly informed, or unlikely to notice an absent IID, and that drivers are well aware of this fact.

Studies on alternatives to IIDs – license suspension, electronic monitoring, and vehicle immobilization

Voas, Tippetts and Taylor

“Temporary Vehicle Immobilization: Evaluation of a Program in Ohio.” *Accident Analysis and Prevention* 29:635-642.

Scant literature exists on immobilization, and IIDs have far surpassed immobilization in judicial popularity since 1993. Practically, immobilization can be costly in terms of hours and machinery. And as with seizure, the lag time between orders and implementation can allow the driver to unload a nice car and get the immobilization on a ‘junker.’ As a result, although immobilization is a part of the Wisconsin statutes and this evaluation, greater attention is given to IIDs in this report

The researchers examined an immobilization program in Columbus, Ohio. Repeat offenders of DWS (Driving While Suspended) or DUI were eligible; immobilization and/or impoundment were assigned most frequently to second offense drunk drivers. Over a two-year study period, immobilization was most effective in a) keeping drunk drivers from receiving a DWS and b) keeping second offense DUI offenders from accumulating another DUI offense. For third and greater DUI offenders, the effect of the sanction was much less strong.

Unsurprisingly, the authors found that while their vehicle were immobilized, drivers had lower recidivism rates in both categories, compared to those who did not receive the sanction. What might be surprising is that this effect carries over after the sanction was removed. Unsanctioned drivers were more likely to drive drunk after the sanction period elapsed.

There are a few problems here. First, the authors concede, “the principle limitation of these results is that the sanctions could not be assigned at random” (p. 640). Obviously, most courts are not willing to randomly assign sanctions for the sake of an accurate scientific study. If there is selection bias in assigning the sanction, then it is hard to say that the sanction works even if the data suggests success. Secondly, the authors compare drivers with sanctions to drivers without sanctions. Making this kind of comparison, it is quite likely that sanctions will appear to work at least partially. A better (but not always feasible) comparison would be to compare immobilization with an alternative sanction.

Related Studies

Gould and Gould

“First-time and Multiple-DWI Offenders: A Comparison of Criminal History Records and BAC Levels.” *Journal of Criminal Justice* 20: 527-39.

This study did not address IIDs; instead, it looked at a cross-sectional sample of arrested male drunk drivers and found correlations between severity of drunkenness and previous criminality. The individual with a criminal record *of any sort*, not necessarily related to driving, was more likely to have a seriously elevated BAC, often greater than .18. This dovetails with the other finding, repeated elsewhere, that repeat offenders have consistently higher BAC levels than first time offenders. By looking at subtypes, the authors found that non-vehicular criminality was highly correlated with high BAC levels. Driving with an especially high BAC, then, is simply another manifestation of criminal behavior.

The point that Gould and Gould emphasize is the differential character of offenders. They go so far as to say “failure to identify subtypes ... may explain the high failure rate of OWI intervention programs” (p. 530). For our purposes, the corollary is that IIDs may not be for everyone. A certain level of inclination to behave socially is needed for compliance, and it may be a mistake to see IIDs as the solution to ‘hard-core’ drinking drivers.

Lilly, Ball, Curry and McMullen

“Electronic Monitoring of the Drunk Driver: A Seven Year Study of the Home Confinement Alternative.” *Crime & Delinquency* 39:462-84.

These authors examined a different attempt to deal with recidivist drunk drivers, electronically monitored home confinement (EM). Though the researchers do not make any explicit comparison to IIDs, the two technologies are similar – vendors tout both as foolproof, both are seen as a solution to expensive overcrowded jails, and both arguably allow the offender to live a reasonably normal life.

The finding was that EM worked with few problems, and was quite cost-effective as an alternative to incarceration. Offenders were, by and large, able to comply with EM requirements without much difficulty, and complete the term of home confinement without incident. Parole violations, though, were markedly increased in the post-EM period.

What so distinguishes home confinement is the human time and resources devoted to ensuring its effectiveness.

McKnight and Voas

“The Effect of License Suspension Upon DWI Recidivism.” *Alcohol, Drugs and Driving* 7(1): 43-54.

This study also did not directly address IIDs, but focused on license suspension. The authors found that license suspension has a quantifiable incapacitation effect when compared to no sanction – license suspension keeps people off the road, and thus prevents accidents. When compared with traditional treatment programs or educational programs, suspension was still more effective at keeping people off the road and out of accidents. But treatment was a better deterrent to future risky driving, and affected more of a behavioral modification.

The important lesson for IIDs is that it is important to make a fair comparison. When compared to nothing or a lesser version, license suspension looks strong. When compared to a true alternative use of resources like treatment, suspension looks like an inferior alternative. Perhaps what these conclusions suggest is the need to conjoin remediation and vehicular sanctions.

Wells-Parker, Elisabeth, Robert Bangert-Drowns, Robert McMillen and Marsha Williams.

“Final results from a meta-analysis of remedial interventions with drink/drive offenders.” *Mississippi State University and State University of New York, Albany, USA. Addiction* (1995) Vol. 90, 907-926.

This study examined a broad range of remediation intervention tools (e.g., treatment, education, counseling, sanctions etc.) to determine their effectiveness in changing the behavior of drunken drivers and affecting recidivism rates.

(Abstract)

“A meta-analysis of the efficacy of remediation with drinking/driving offenders included 215 independent evaluations identified through a comprehensive literature search. Study characteristics, including dimensions of methodological quality were coded using scales and protocols developed by expert panels. Among studies with adequate methods, the average effect of remediation on drinking/driving recidivism was an 8-9% reduction over no remediation. A similar effect size was found for alcohol crashes. However, licensing actions tended to be associated with reduction in occurrence of non-alcohol events (e.g., non-alcohol crashes).

Exploratory regression analysis and confirmatory within study analysis suggested that combinations of modalities - in particular those including education, psychotherapy/counseling and follow-up contact/probation – were more effective than other evaluated modes for reducing drinking/driving recidivism”

Although this research did not include Ignition Interlock Devices, it still underscores the assertion that there is not one profile of the drunken driver that fits all situations, nor is there one tool that can be used to change the behavior of the offender and to reduce recidivism rates.

Does the IID teach and reinforce behavior?

It appears that the IID achieves modest reductions in recidivism when instituted on the automobiles on repeat offenders. However, IID programs are not permanent; in fact, they are statutorily limited and cannot be permanent unless the driver opts to keep the IID. This begs the question: what happens after IIDs are removed from the automobile? Has the participant learned new, safer behaviors through the reinforcement of the IID?

The IID is very much a positivist device. That is, it provides immediate positive or negative feedback regarding your attempted actions – if you try to drive drunk, you are stopped; if you try to drive sober you are permitted. If people learn through this sort of stimulus and response, then a year with an IID ought to produce a wiser and better-adjusted driver.

Despite this interesting hypothesis, the data suggests that this is not the case. Jones concludes that ‘the IID is effective in reducing arrest rate while it is on the car.’ The data from Morse and Elliot shows that while IIDs initially produce a much higher ‘survival rate’ (percent of people completing a period without reoffense), these rates become almost identical after IID removal (see chart on p. 151 of their article). And Weinrath notes ‘the decline in effectiveness after the interlock was removed.’ (p. 56-7).

In other words, while IIDs may be effective while installed on a vehicle, their efficacy seems to disappear in the long term. Studies that have followed IID participants for months and years after the removal of the device find that recidivism returns to, or even exceeds, the rates of drivers who had their licenses revoked or received different sanctions.

As noted earlier in this report, a compelling theory of drunk driving suggests an absence of rational calculation of costs and benefits. While this does not preclude learning *per se*, the data suggests that the IID alone is insufficient to teach this sort of behavior.

Other Uses of the IID

It has been suggested that one of the secondary uses of the IIDs is as a public relations tool. Because of the IID’s capacity to keep records, a quantifiable measure of prevention is available. Moreover, technological measures to address stubborn social problems like drunk driving often meet with public interest and approval. A brief January 2003 report on IID success by the Pennsylvania DUI Association was picked up by the Associated Press and published in USA Today, the Atlanta Journal-Constitution, and various smaller papers across the country.

Still, these public relations uses should in no way justify the presence of IIDs if there is not evidence that they perform their primary job of reducing drunk driving.

Methodological Issues

Because IIDs are recent and widespread, there has naturally been an effort to evaluate and quantify their effectiveness. Researchers have gathered data from the first year or two of IID programs, and written up results, which are mixed, contradictory, and far from conclusive.

IIDs should not be proclaimed a success based on a limited period of time. Scholars of law and program evaluation sometimes talk about the “Hawthorne effect.” The Hawthorne effect says that when a program is first introduced, it is often accompanied with excellent funding, good publicity, and enthusiasm within the community and government. However, these supporting factors can waver after the initial excitement. Program success declines after the first salvo of resources devoted to it; but the program stay in place, having been deemed effective. In other words, watch out for ‘fads’ when evaluating new programs.

Chapter Four: The Prospectus for Continued Research

This report is intended to provide an outline of both the theoretical basis for ignition interlock devices, and the existing empirical evaluations that have been performed by state agencies, academics, non-profit organizations, and government scientists. All of this is useful in thinking about how to construct an evaluation of Wisconsin's IID program.

What is being evaluated?

“When such [drunk driving] programs are shown to fail in achieving their goals, we do not know whether the failure is due to an inadequate program model which should, therefore, be discarded, or to the failure to deliver the program appropriately.”

J.L. Fitzpatrick, “Problems in the evaluation of treatment program for drunk drivers: goals and outcomes,” *Journal of Drug Issues*

This is precisely the problem in moving forward with this evaluation. There are two questions to address:

- Are IIDs effective in Wisconsin, *in a controlled study with enforcement that compares IIDs to other measures?* If not, then the program model is inadequate.
- Are IIDs effective in Wisconsin, *as they are currently implemented?* If not, then there is a failure to deliver the program appropriately.

Also, in evaluating IID efficacy, a comparison should be made between IIDs and alternatives. It would be unfair to compare the implementation of IIDs with no sanction at all: surely doing something will have a more pronounced effect than doing nothing.

The quantitative component

The template for constructing a good quantitative study of IIDs compared to either a) a different sanction or b) a control group who is allowed to drive has been laid out by several scholars. A crucial initial step is the collection of extensive demographic data on participants. With this information, other factors that may influence IID success could be seen. Minimal demographic data would include:

- Age
- Race
- Gender
- Employment Status

- Marital status
- Rural or urban residence. Drivers in rural areas may be much more reliant on an automobile, without public transit or immediately available shopping and employment.
- Some assessment measure of acuity of alcoholism or receptivity to treatment. A number of psychological assessment scales, such as the Mortimer-Filkins test or the MMPI, exist as a shorthand psychological profile that can be quickly administered. These simple tests measure aggressiveness and other traits that may be indicative of an individual's compliance and interest in rehabilitation (Peck et al). The inclusion of this data augments the strength of a study by being able to differentiate between types of recidivists (Weinrath 1997).

A random distribution, or as close as possible, is desirable. That is, the demographic traits of the IID and control groups should be as close to identical as possible. In Maryland, Beck et al were able to randomly assign IIDs to a group of eligible offenders. It is not clear whether a strictly random assignment would be constitutional, or whether the judiciary would accede to this method.

With this data, most studies track the offenders beginning when the IID is installed, and continuing to at least the end of the IID period and usually several years after the IID was removed. Studies of this sort are called *longitudinal studies*, examining a group or groups over time to track their behavior. Longer-term studies are more expensive but yield more interesting results, insofar as assessing whether IIDs have any long-range effects on drivers.

A quicker and still interesting piece of quantitative work would simply come from the data each IID stores in its memory. The number of IID failures, the number of tampering attempts, and the BAC level of passes and failures could all be examined. The Pennsylvania DUI Association study followed this framework, and while there are not broad conclusions that can be drawn, some interesting statistics were gleaned. It might surprise many observers, for example, that *93 percent of IID lockouts occurred with a BAC below .10*. This contradicts data on the drinking habits of repeat drunk drivers, and suggests several conclusions: first, that people are having a few drinks and trying to 'slip under' the IID; secondly, that when people are truly drunk they do not bother with the IID. In the second case, it is unclear whether this means impaired drivers are being safer (taking a taxi, riding with a friend) or more dangerous (using another car when they know they are going to get drunk).

Also, if the data were complete enough, a study like Weinrath's (described in section IV) could be devised. By comparing reinstated drivers in the years prior to vehicular sanctions with demographically similar drivers who had IIDs installed, a fair 'on-the-road' comparison could be done. However, Weinrath's study is unique because of the medical advisory board involved in arbitrating reinstatement.

What is the metric of success or failure?

Studies diverge in what they use as the measure of recidivism. Is recidivism simply receiving another OWI? Is recidivism another conviction for a moving violation? Or more broadly, is recidivism the involvement in any sort of further unsafe traffic behavior? Scholars have argued for broader measures of recidivism, to deepen the sample and remove the biases that exist within the court system (thus Gould & Gould argue for studying *arrests* instead of *convictions*).

The advantages of using a narrow measure, like repeat OWI convictions, lie in the ease of data: court records and DMV record keeping make the tabulation of this measure uncomplicated. But studies cannot be structured on availability of data alone. More inclusive measures of recidivism allow us to assess whether IIDs are *truly making the roads safer*. It is not clear that just because a person is not convicted of another OWI, IIDs have been a success.

Given the limited time available for our assessment of IIDs, a long-term quantitative study is not feasible. Moreover, a controlled quantitative study (random assignment and mandatory compliance) would blind itself to the fact that the main issue with IIDs is compliance. In a quantitative study, IID compliance would be artificially enforced for the purpose of being able to make a good comparison.

The qualitative component

Clearly, an important part of this evaluation, perhaps the most important, consists of gathering first hand accounts from IID users and enforcers. The statutes are clear that ‘the departments shall consult with the counties, the law enforcement agencies, the courts, and the providers of service to alcohol abusers.’ The study evaluator should talk directly with:

- District Attorneys.
- Judges. How aware are judges of the IID option, and who receives an IID order? Do judges give IIDs to more incorrigible drunk drivers, who are seen as less reformable by traditional measures? If that is the case, then IIDs are less likely to succeed given the population they are addressed to.
- Citizens. Technically advanced solutions like IIDs are often either initially popular due to astonishment with the technology; or poorly understood because of their complexity. In both cases, there could be mistaken or overzealous perceptions about the implementation and efficacy of IIDs. A survey of attitudes and knowledge about IID law and technology would help us understand what people know, and how to correct mistaken notions.
- Professionals in assessment and treatment. What are the thoughts of people intimately involved with the psychology of the repeat offender? Do IIDs work?

Can IIDs work? What should be done, and what needs to be understood about these offenders that quantitative data misses?

- The offenders themselves. If a scenario could be structured where people with IIDs could candidly answer a series of questions, exempt from any legal retribution, this could provide useful insight as to why most IIDs never make it onto vehicles. Why don't people comply? For that matter, why do people comply? How much do they know about the IID and the law surrounding it?

In talking with these people, the study should examine:

- Larger counties. While the data shows the IID use is very low in many Northern counties, there are self-evident explanations (like the distance to an IID installation center); and drunk driving caseloads are so small – in 2001 14 counties had fewer than 100 annual OWI convictions, compared to 2000+ in more urban counties – resources should be concentrated on regions where drunk driving is most prevalent.
- Some high population/arrest/conviction/IID use counties: Milwaukee, Dane, and Waukesha are the three clearest candidates.
- Some counties where IIDs are used proportionally more than the level of arrests would suggest: Manitowoc, Winnebago, and Sheboygan counties are prime candidates.
- Some counties where IIDs are used proportionally less than the level of arrests would suggest: the southern counties of Rock, Racine, and Kenosha are good candidates.

Public outreach

In addition to research, it appears that IIDs could work better if there was more education about their strengths and limitations. If most of the information judges receive about IIDs comes from the IID vendor, then the judges may have an inflated idea about IID effectiveness. Educating the judiciary, law enforcement, attorneys, and potential offenders about the IID could reap significant gains in enforcement, understanding, and fair application.

Phase I Report Findings

The principal findings of this report are as follows:

- **Vehicle immobilization can be costly and impractical in terms of law enforcement.** As with vehicle seizure, the lag time between orders and implementation can allow the driver to unload a nice car and assign the immobilization order to a “junker” vehicle. Also, vehicle immobilization can create other legal problems such as obstructing traffic and illegal parking depending upon where the vehicle is parked.
- **The inclusion of IIDs in the judicial toolkit is one of the principal legal changes of drunk driving law in the last decade.** As a result, IIDs have become more commonly ordered than other sanctions like vehicle seizure or immobilization.
- **IIDs attempt to provide a flexible and humane sanction, a device that allows the offender to conduct his/her life and travel fairly normally so long as she/he stays sober.**
- **Most IID orders in Wisconsin are not complied with.** IIDs may work in a controlled environment, but the actual implementation leaves much to be desired. Plainly put, offenders infrequently comply with court orders for IIDs. Three significant factors exist: the expense to the driver of IID installation; the small possibility of being caught for shirking an IID order; and a general lack of knowledge about how IIDs work. In addition, many offenders fail to reinstate their driver’s license, which is required for compliance with the IID order.
- **Preliminary evidence suggests that IIDs are not uniformly assigned around the state and that there may be a geographic bias where areas closer to IID vendors assign IIDs more frequently** (Note however in Phase II, two vendors disputed the assertion that IIDs are not uniformly available statewide, and stressed their diversity statewide and their willingness to accommodate. One vendor noted that he operated in cities across the state and was equipped with a mobile van for service. One vendor acknowledged that service was not uniform, and that the distance and expense of traveling to service centers could further deter compliance).
- **Drunk drivers, even repeat drunk drivers, are a heterogeneous population.** Depending on their personality type, traditional treatments or other sanctions may work better than IIDs. IIDs have a place in preventing recidivism, but some have also suggested that better results could be achieved by disaggregating offenders for more individualized treatment. The Weinrath study concludes: *“Put simply, the success of Alberta’s [IID] program likely was due to more individualized management of impaired drivers than ... other programs.”*

- **Although popular, The IID is no “silver bullet.”** In controlled studies, IIDs work in the short term, while they are on the car; but it appears that there is not any long-term behavioral effect. IIDs may be more useful to the offender in the period immediately after arrest, but research suggests that money might be better allocated to different treatment, especially non-vehicular sanctions.
- **An IID may be the right choice for a small segment of the population (repeat offenders) responsible for drunk driving, however it does not address the repeat offender’s need for alcohol.** To be fair, it can also be argued that this may not be the purpose of IIDs. IIDs may simply protect the public from a repeat offender who can no longer be trusted on the road.
- **The implementation of IIDs is as important as how well the device works itself.** If looking at IIDs very narrowly, when compliance is enforced and resources are committed, they seem to work. But looking more broadly, when compliance is less supervised and the initial interest in IIDs has faded, the device becomes less effective. Research suggests that in order to make IIDs work as they are supposed to, more time and money needs to be devoted to IID enforcement and development of an effective process for compliance with the court order.
- **If IIDs are not worth the additional funding support, some have suggested that the money should go into traditional treatment and remediation, or else a new statutory sanction could be developed.**
- **The Federal rule requiring a one-year hard suspension for repeat offenders (two or more convictions within a 5-year period), thwarts the effectiveness of an IID program because an IID cannot be ordered until after the suspension has been satisfied.**

Glossary of Abbreviations and Terms

BrAC/BAC: Breath Alcohol Content/Blood Alcohol Content. An IID and a police station Intoximeter measure the BrAC, expressed as the number of grams of ethanol per 210 liters of a person's breath. A blood alcohol test evaluates the number of grams of alcohol per 100 milliliters of a person's blood. .

Trans 313: Short for Transportation 313, the Department of Transportation administrative rule governing the application, license, and use of IIDs. Current versions available online at <http://www.legis.state.wi.us/rsb/code/trans/trans313.pdf>

IID: Ignition Interlock Device.

Intoximeter: The trade name of the evidentiary breath test device used in police stations.

OWI: Operating While Intoxicated, the official name for the drunk driving charge in Wisconsin. In other states this is known as DWI, DUI, or DUH (driving under the influence of intoxicants).

Rolling retest: An IID feature where the driver is prompted to give a random breath sample within a specified time period as long as the vehicle is running.

Survival rate: The percentage of people who make it through a set period of time without re-offending. Used in scholarly studies and evaluation of vehicle sanctions.

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National Institute on Alcohol Abuse and Alcoholism (a sub-agency of the National Institute of Health) <http://www.niaaa.nih.gov/>

Databases:

Rutgers Alcohol Studies. http://www.scc.rutgers.edu/alcohol_studies/alcohol/

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The Marin Institute. <http://marin.andornot.com/>

Appendix A: Effects of 1999 Act 109

(Provided courtesy of Bureau of Driver Services, Wisconsin Division of Motor Vehicles). The following provides a chronology of drunk driving laws as related to vehicle sanctions.

1999 Act 109 relates mostly to penalties for repeat OWI offenders. In addition it makes some minor changes to other areas of OWI law and modifies underage drinking penalties.

Most of Act 109 went into effect January 1, 2001. A few provisions went into effect July 1, 2000. Changes to the Ignition Interlock Device (IID) and Vehicle Immobilization laws are effective January 1, 2002.

JULY 1, 2000 CHANGES

Before July 1, 2000	July 1, 2000 and After
Mandatory for all OWI offenders, including 1 st offenders, to appear in court	For 1 st offenders municipalities may eliminate mandatory OWI appearances in municipal court if they choose.
Mandatory vehicle seizure for all 4 th and subsequent offenses. Vehicle may be seized, but is not required to be seized, for all 3 rd convictions	Vehicle may be seized, but is not required to be seized, for all 3 rd and subsequent convictions.
Seizure order may be for any vehicle owned by the offender	Only the vehicle used in the OWI offense may be seized.

JANUARY 1, 2001 CHANGES

New Underage Drinking License Sanctions

Underage Drinking Driver License Sanctions §125.07(4)(a) Procuring Alcohol and 125.07(4)(b) Consuming Alcohol [for people under age 21]		
Offense	Violations Before 1/1/2001	Violations 1/1/2001 and After
1 st in 1 year	30-90 day suspension. Court discretion.	30-90 day suspension. Court discretion. No change.
2 nd in 1 year	Up to 1-year suspension. Court discretion.	Up to 1-year suspension at court discretion normally. Mandatory suspension for up to 1 year if offense involved a motor vehicle.
3 rd in 1 year	Up to 2-year suspension. Court discretion.	Up to 2-year suspension at court discretion normally. Mandatory suspension for up to 2 years if offense involved a motor vehicle.
4 th and	Up to 2-year suspension.	Up to 2-year suspension at court discretion

Underage Drinking Driver License Sanctions §125.07(4)(a) Procuring Alcohol and 125.07(4)(b) Consuming Alcohol [for people under age 21]		
Offense	Violations Before 1/1/2001	Violations 1/1/2001 and After
subsequent in 1 year	Court discretion	normally. Mandatory suspension for up to 2 years if offense involved a motor vehicle.

The bill also creates s. 346.93(2g), Stats. which imposes similar mandatory license suspensions on underage persons convicted of possessing alcohol in a motor vehicle.

Vehicle Title Stops

DMV will no longer place ownership-transfer-stops on vehicle title records of vehicles not involved in the violation, with the following exception: During 2001, if the district attorney doesn't identify the involved vehicle on the MV2832 (which will be unlikely), then DMV will put stops on all vehicles owned by the driver named on that form; beginning 1/1/02 if the district attorney doesn't identify the involved vehicle, we will contact him or her, requiring that the involved vehicle be identified before we place any stops on title records.

Prior OWI Offense Counting

Note: Refusals and convictions from the same incident continue to count as one prior offense.

New counting rules for violations on or after 1/1/2001:

(1) Count:

- ALL 940.25 violations (great bodily harm by intoxicated use of a motor vehicle)
(Includes GBH, CBH, HBH, CAH and HAH)
PLUS
- ALL 940.09(1) violations (homicide by intoxicated use of a motor vehicle)
(Includes NHI, CHI, HHI, CAD and HAD)
PLUS
- ALL other OWI offenses counted under s. 343.307(1) or (2) with violation dates on or after January 1, 1989.
(Includes OWI, PAC, CWI, HWI, OCS, CCS, HCS, OII, CII, HII, IC, CIC and HIC)

(2) Are there two or more prior offenses?

- Yes? Every offense counted counts as a prior offense
- No? Go to #3.

(3) Is the one prior offense for a 940.09(1) or 940.25 violation?

- Yes? Second offense
- No? Go to #4.

(4) Did the one prior offense occur within the preceding 10 years?

- Yes? Second offense
- No? First offense

OWI Penalties

- Increases the minimum fine for second offense drunk driving from \$300 to \$350 dollars and the maximum from \$1000 to \$1100.
- On **third and subsequent** offenses fines may be increased for high Blood Alcohol Concentration.

OWI BAC BASED PENALTIES FOR REPEAT OFFENDERS - ACT 109		
BAC	Fine Multiplier	Fine Amount
Below .17	Normal fine	\$600 - \$2000
	Doubled if there is a minor in the vehicle*	\$1200 - \$4000
.17 to .19	Twice the normal fine	\$1200 - \$4000
.20 to .24	3 times the normal fine	\$1800 - \$6000
.25 and Above	4 times the normal fine	\$2400 - \$8000

**Note: Fines are not doubled for minors in the vehicle in cases where fines are already multiplied for a BAC of .17 or higher.*

New Prohibited Alcohol Concentration Level for Repeat Offenders

Old Law

Prior Convictions	Prohibited Alcohol Concentration
None or One	.10 or above
Two or More	.08 or above

New Law

Prior Convictions	Prohibited Alcohol Concentration
None or One	.10 or above*
Two	.08 or above
Three or More	Above .02

As of 9/30/03, the prohibited alcohol concentration changed to 0.08 and above for first offense OWI.

Other Miscellaneous Provisions

- Drivers unable to pay OWI fines must perform community service to pay off the debt.
- Huber law and prisoner work release laws now will require assessment and compliance with a driver safety plan as a condition of release. Offenders may be released to comply with assessment and driver safety plan.
- WisDOT to maintain records of OWI offenses permanently.
- Raises the driver improvement surcharge from \$340 to \$345. Extra \$5 to fund safe-ride / ride-share programs.

JANUARY 1, 2002 CHANGES

Ignition Interlock Devices

- The Department of Transportation is given broad rule making authority to establish a statewide program.
- IIDs are tied to a person's operating privilege rather than to a particular vehicle.
- Statutory provisions establishing an IID program are pulled out of s. 346.65, Stats. and moved over into new s. 343.301.
- IIDs can be ordered as a license restriction on persons on second and subsequent offense drunk driving or refusal of chemical testing.
- Under Act 109, IIDs can be ordered for any length of time from 1 year to the maximum available revocation period for the offense. Thus, on fourth offense OWI, for example, a court could order a 2-year revocation and a 3-year IID restriction. This would require the driver to have an IID even after he/she is done with his/her occupational license.
- IIDs are installed at the defendant's expense. It is a violation of the license restriction for a driver to have another person blow into the device or to operate any vehicle without an IID.
- IIDs may be required only on regular cars, the only vehicles upon which ignition interlock devices are installed today. Persons subject to an IID restriction can operate a commercial motor vehicle or motorcycle without an IID. IID vendors say that there aren't IIDs available for motorcycles (and they may be dangerous on cycles). Nor were vendors excited about installing devices in big trucks and buses.

Vehicle Immobilization

- Immobilization provisions are moved to s. 343.301, Stats. in Act 109.
- A court on second or subsequent offenses may order immobilization for a period of 1 year to the maximum license revocation period allowed for the offense committed.
- Defendants pay the cost of immobilization.
- DMV notes on its records that a vehicle is subject to immobilization at the time the court so orders.
- As under current law, law enforcement provides notice of immobilization to lien holders of record.

Appendix B: Effects of 2001 Act 16

(Provided courtesy of Bureau of Driver Services, Wisconsin Division of Motor Vehicles)

There are two main provisions in Act 16 for any driver with 2 OWI offenses within 5 years:
They will not be eligible for an occupational or hardship license for one year
They will be subject to seizure, immobilization or ignition interlock requirements on all vehicles for which their name appears on the title or registration.

2001 Act 16 brings Wisconsin into compliance with federal TEA-21 - chapter 164 requirements for repeat offenders September 30, 2001. Most of these statutory changes go into effect September 30, 2001 and impact 1999 Act 109 changes effective January 1, 2002. They apply to new offenses (arrests that result in a conviction) that take place on or after the effective dates, but take into account prior offenses that are part of the offender's driving history.

Vehicle Sanctions: Seizure

Vehicle Seizure remains the same. For third and subsequent convictions, only the vehicle used in the offense and owned by the offender may be seized. Seizure may be used in combination with other vehicle sanctions to meet the federal requirements. Seizure is not an option for 1st or 2nd convictions.

Example: For someone with 3 offenses and 2 within any five-year period, the court may order the offender's vehicle used in the offense seized. Starting 9/30/01, all other vehicles for which the offender's name appears on the title or registration must be immobilized or equipped with IIDs.

Hardship exception remains the same as current law - "The court may not order a vehicle seized... if seizure would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person."

Vehicle Sanctions: Immobilization

For violations committed before September 30, 2001 resulting in a conviction

Offender Status	Sanction	Time Period	Wis. Statute
1 st Offender	None		
2 nd offender (2 within 10 years or 1 st offense was NHI or GBH OVI)	None		
3 rd or subsequent (3 or more in lifetime)	Court must order a vehicle owned by the person immobilized if vehicle used in offense wasn't ordered seized or if a vehicle owned by the offender wasn't ordered equipped with an IID.	Not more than the period the offender's operating privilege was revoked. <i>Note: This means it is based on the actual ordered period of revocation vs. the maximum revocation period for the offense.</i>	343.301(2)(a) 346.65(6)(a) 1.
Hardship exception: "The court may not order a vehicle... immobilized if that would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person."			346.65(6)(a) 1.

Immobilization**FOR VIOLATIONS COMMITTED SEPTEMBER 30, 2001 - DECEMBER 31, 2001 RESULTING IN A CONVICTION**

Offender Status	Sanction	Time Period	Wis. Statute
1 st Offender	None		
2 nd offender (2 within 10 years or 1 st offense was NHI or GBH OWI)	None		
3 rd or subsequent (3 or more in lifetime)	Court must order a vehicle owned by the person immobilized if vehicle used in offense wasn't ordered seized or if a vehicle owned by the offender wasn't ordered equipped with an IID.	Not more than the period the offender's operating privilege was revoked. <i>Note: This means it is based on the actual ordered period of revocation vs. the maximum revocation period for the offense.</i>	343.301(2) 343.305(10m) 346.65(6)(a) 1.
Hardship exception: "The court may not order a vehicle... immobilized if that would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person."			346.65(6)(a) 1.
2 nd or subsequent offender - 2 offenses within any 5-year period.	All vehicles for which the offender's name appears on the title or registration must be immobilized unless they were ordered equipped with IID or ordered seized.	Not less than 1 year nor more than the maximum revocation period for the offense. <i>The time-period starts on the date of revocation for the offense.</i>	343.301(2) 343.305(10m) 346.65(6)(a) 1.
Hardship Exception: If immobilizing each motor vehicle would cause undue hardship to any person, except the person to whom the order applies, who is completely dependent on a motor vehicle subject to immobilization for the necessities of life, including a family member or any person who holds legal title to a motor vehicle with the person to whom the order applies, the court may order that one or more motor vehicles not be immobilized.			343.301(2)

Immobilization

For violations committed January 1, 2002 and after resulting in a conviction

Offender Status	Sanction	Time Period
1 st Offender	None	
2 nd or subsequent (2 within 10 years or 1 st offense was NHI or GBH OWI, but none within 5 years of	Court may order immobilization of the vehicle owned by the offender and used in the offense.	Not less than 1 year or more than the maximum revocation period for the offense. <i>The time-period starts on the date of revocation for the offense.</i>

Immobilization

For violations committed January 1, 2002 and after resulting in a conviction

Offender Status	Sanction	Time Period
another)		
2 nd or subsequent offender - 2 offenses within any 5-year period.	All vehicles for which the offenders name appears on the title or registration must be immobilized unless they were ordered equipped with IID or ordered seized.	Not less than 1 year or more than the maximum revocation period for the offense. <i>The time-period starts on the date of revocation for the offense.</i>
Hardship Exception: If immobilizing each motor vehicle would cause undue hardship to any person, except the person to whom the order applies, who is completely dependent on a motor vehicle subject to immobilization for the necessities of life, including a family member or any person who holds legal title to a motor vehicle with the person to whom the order applies, the court may order that one or more motor vehicles not be immobilized.		

Vehicle Sanctions: Ignition Interlock Devices (IID)

For violations committed before September 30, 2001 resulting in a conviction

Offender Status	Sanction	Time Period
1 st Offender	None**	
2 nd offender (2 within 10 years or 1 st offense was NHI or GBH OWI)	None**	
3 rd or subsequent (3 or more in lifetime)	<p>IID restriction for Class D operation on occupational license if the court ordered a vehicle owned by the offender equipped with an IID.</p> <p>-----</p> <p>Court must order IID on a vehicle owned by the person if vehicle used in offense wasn't ordered seized and if a vehicle owned by the offender wasn't ordered immobilized.</p>	<p>Duration of occupational license</p> <p>-----</p> <p>Not more than 2 years more than the period the offender's operating privilege was revoked. <i>Note: This means it is based on the actual ordered period of revocation vs. the maximum revocation period for the offense.</i></p>
Hardship exception: "The court may not order a vehicle... equipped with an IID... if that would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person."		

Ignition Interlock Devices (IID)

For violations committed September 30, 2001 - December 31, 2001 resulting in a conviction

Offender Status	Sanction	Time Period
1 st Offender	None**	
2 nd offender (2 within 10	None**	

Ignition Interlock Devices (IID)

For violations committed September 30, 2001 - December 31, 2001 resulting in a conviction

Offender Status	Sanction	Time Period
years or 1 st offense was NHI or GBH OWI - but none within 5 years of another)		
3 rd or subsequent offender (3 or more in lifetime - but none within 5 years of another)	IID restriction for Class D operation on occupational license if the court ordered a vehicle owned by the offender equipped with an IID. ----- Court must order IID on a vehicle owned by the person if vehicle used in offense wasn't ordered seized and if a vehicle owned by the offender wasn't ordered immobilized.	Duration of occupational license ----- Not more than 2 years more than the period the offender's operating privilege was revoked. <i>Note: This means it is based on the actual ordered period of revocation vs. the maximum revocation period for the offense.</i>
2 nd or subsequent offender - 2 offenses within any 5-year period.	IID restriction for Class D operation on occupational license if the court ordered each vehicle owned by the offender equipped with an IID. ----- All vehicles for which the offenders name appears on the title or registration must be equipped with IID unless they were ordered immobilized or ordered seized.	Duration of occupational license ----- Not less than 1 year or more than the maximum revocation period for the offense. <i>The time-period starts 1 year from the date of revocation for the offense.</i>
Hardship Exception: If equipping each motor vehicle with an IID would cause an undue financial hardship, the court may order that one or more motor vehicles subject to the IID requirement not be equipped with an IID.		

Ignition Interlock Devices (IID)

For violations committed January 1, 2002 and after resulting in a conviction

Offender Status	Sanction	Time Period
1 st Offender	None**	
2 nd or subsequent offender - but none within 5 years of another	IID restriction for Class D operation on occupational license if the court ordered a vehicle owned by the offender equipped with an IID. ----- Court may order IID as restriction on Class D driving privilege.	Duration of occupational license ----- Not less than 1 year or more than the maximum revocation period for the offense.
2 nd or subsequent	IID restriction for Class D	Duration of occupational license

Ignition Interlock Devices (IID)

For violations committed January 1, 2002 and after resulting in a conviction

Offender Status	Sanction	Time Period
offender - 2 offenses within any 5-year period.	operation on occupational license if the court ordered all vehicles owned by person equipped with an IID.	
	Court may order IID as a restriction on Class D driving privilege.	Not less than 1 year or more than the maximum revocation period for the offense.
	All vehicles for which the offenders name appears on the title or registration must be equipped with IID unless they were ordered immobilized or ordered seized.	Not less than 1 year or more than the maximum revocation period for the offense. <i>The time-period starts 1 year from the date of revocation for the offense.</i>
Hardship Exception: If equipping each motor vehicle with an IID would cause an undue financial hardship, the court may order that one or more motor vehicles subject to the IID requirement not be equipped with an IID.		

** DMV will place the restriction on the occupational license privilege whenever the court orders it. See Trans 117.04(5)(a) 2.

Occupational License Eligibility

Effective 9/30/01, OWI offenders with 2 or more offenses within any five-year period are eligible for an occupational license one year from the date of revocation for the offense. Current eligibility criteria apply to multiple offenders with offenses that are not within any five-year period. Act 109 does not change this area of the law so no additional changes come into play 1/1/02.

For violations committed before September 30, 2001 resulting in a conviction

Offender Status	Occupational License Eligibility*	Wis. Statute
1 st offense OWI	Immediately	343.30(1q)(b) 2. 343.31(3)(bm) 2.
2 nd offense OWI (2 within 10 years or 1 st offense was NHI or GBH OWI)	60 days from the beginning date of revocation.	343.30(1q)(b) 3. 343.31(3)(bm) 3.
3 rd or subsequent OWI offense (3 or more in lifetime)	90 days from the beginning date of revocation.	343.30(1q)(b) 4. 343.31(3)(bm) 4.
1 st and 2 nd offense OWI causing injury (OII)	60 days from the beginning date of revocation.	343.31(3m)(b)
All OWI great bodily harm (GBH) OWI homicide (NHI)	120 days from the beginning date of revocation.	343.31(3m)(a)
1 st offense Refusal	30 days from the beginning date of revocation.	343.305(10)(b) 2.
2 nd offense Refusal	90 days from the beginning date of revocation.	343.305(10)(b) 3.
3 rd & subsequent offense Refusal	120 days from the beginning date of revocation.	343.305(10)(b) 4.

For violations committed September 30, 2001 and after resulting in a conviction

Offender Status	Eligibility*	Wis. Statute
Same as above unless 2 or more OWI-type offenses occur within any 5 year period	One year from date of revocation.	Same as above

**Note: Other driver record criteria may affect eligibility.*

Other OWI Changes

Before 9/30/01 2nd offenders may perform 15 hours of community service in lieu of 5 days in jail. Effective 9/30/01, 2nd offenders must perform 30 hours of community service in order to avoid jail-time.

Effective September 1, 2001, the OWI surcharge increases by \$10 from \$345 to \$355.

Ignition Interlock Devices and Vehicle Immobilization:

Phase II Report

**Analysis with Legal Professionals, Law Enforcement,
Counties, and Assessment Agencies Regarding the Efficacy of
Vehicular Sanctions**

By:

**Adam D. Jacobs,
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BUREAU OF TRANSPORTATION SAFETY in Conjunction
with the WISCONSIN DEPARTMENT OF HEALTH AND
FAMILY SERVICES**

August 25, 2003

Introduction

The initial phase of evaluating Wisconsin's laws on Ignition Interlock Devices and vehicle immobilization discussed the existing scholarly research, and raised questions to be explored in greater depth. In the second phase, agency and court opinions on various aspects of IIDs and vehicle immobilization were collected. This report presents, analyzes and summarizes those opinions.

The mandate for this study arose from Section 88(3) of 1999 Wisconsin Act 109 Act, which stated:

“The department of transportation and the department of health and family services shall study jointly and evaluate the effectiveness of using ignition interlock devices and vehicle immobilization as methods of reducing the prevalence of drunk driving and the recidivism of drunk-driving offenders. *The departments shall consult with the counties, the law enforcement agencies, the courts and the providers of services to alcohol abusers regarding this study and evaluation.* No later than the first day of the 24th month beginning after the effective date of section 343.301 of the statutes, as created in this act, the department shall submit a report to the legislature in the manner provided under section 13.172 (2) of the statutes that contains the conclusions of the departments' study and evaluation and any recommendations concerning implementation of the conclusions.” [emphasis added]

To achieve this, the Department of Transportation distributed surveys to law enforcement, alcohol assessment professionals, district attorneys, judges and private attorneys statewide, and also consulted with IID vendors. By conferring with sheriffs, county human service agencies, district attorneys and circuit court judges, the study fulfilled the mandate of consultation with the counties.

Chapter 1 of this report discusses methodology, selection, and participation in the survey. Chapter 2 shows participants' responses to several statements about IIDs and immobilization. In Chapter 3, responses to open-ended questions are presented from each group surveyed, and conclusions drawn for each group. Chapter 4 analyzes the responses as a whole. Chapter 5 addresses the overarching issue of IID non-compliance, attempting to synthesize the concerns and suggestions articulated across all groups. The report concludes with the most important findings.

Chapter One: Methodology of Phase II

Before undertaking a study, Bureau of Transportation Safety staff discussed various possible approaches to completing the legislative mandate. Separate surveys were designed and distributed to law enforcement officials, assessment professionals (people who provide counseling and rehabilitative services to alcoholics and alcohol abusers) and legal professionals (district attorneys, defense attorneys, and circuit court judges).

Officials in the Wisconsin State Patrol provided names of sheriffs, police chiefs, and state troopers for the *law enforcement* survey. These officials were selected for their knowledge, experience, and represented a diversity of views for different parts of the state. For the *assessment professionals*, surveys went to one agency in each county statewide. For *the courts*, a statewide non-random selection was done for District Attorneys, private attorneys who defend OWI cases, and circuit court judges, attempting to gain a balanced palette of opinion as suggested in phase I of this report.

The legislative mandate also called for consultation with counties. It was decided that since county-level officials were consulted in each of the three groups highlighted above, the mandate was fulfilled.

Surveys were sent to 15 law enforcement professionals, 69 assessment agencies (some counties had consolidated service agencies with neighboring counties), 20 district attorneys, 10 private attorneys, and 20 circuit court judges. Where available, surveys were distributed by email, though most were sent by traditional mail. Participants were given three weeks to respond, and the response rate was just above 50 percent. 73 out of 134 surveys were returned: 9 by law enforcement, 28 by legal professionals, and 35 by assessment professionals.

The exact wording of the surveys can be seen in full in Appendices A, B, and C at the end of this report.

Survey design

When designing a survey, there are two extremes within which to work. On the one hand, the survey can prompt the respondent with a *closed question*. For example, all of the questions could be asked in a yes/no manner, or each question would require a numerical answer. ‘Are IIDs a good legal tool, yes or no’ is a closed question. On the other extreme, every question can be an open question, without any set responses to choose from. For example, “What do you think about IIDs?” would be an open question.

The eventual survey opted for a mix of both closed and open question, with many more open questions. Since focus groups were not conducted, it was deemed important to give participants the space to provide first-hand anecdotes and to expand on their experiences and opinions with vehicle sanctions.

The first four questions were administered on a *Likert Scale*. A Likert Scale is a form of closed questioning that presents a set of statements with attitude responses to choose from. The available responses to every question is: Strongly Agree, Agree, Neutral, Disagree, and Strongly Disagree. The participant circles one of these responses. With a Likert Scale, discerning overall attitudes within a group becomes easier – especially with bar graphs, it is clear whether a group generally agrees, disagrees, or is split on an issue. Also, this form of questioning shows how strongly people feel about the questions.

The remaining 12 questions (13 for legal professionals) were open ended. Participants were asked about their experience with IIDs, and about the training they had received. In some questions, a fact was presented, and people were asked to explain the fact. For example, question 7 asked, “DMV data shows that the majority of court orders for IIDs are not complied with. Why do you think this is the case? Is the problem the device itself, or the implementation of the law?” Open questions were very useful in soliciting not only opinions and experience, but also observations about difficulties, and suggestions for improvements.

Chapter Two: Responses to Statement about IIDs and Immobilization

Responses to Likert scale questions

A Likert scale is a simple way to quantify someone's opinions. A person is given a statement and asked to choose from five responses: Strongly Agree, Agree, Neutral, Disagree, and Strongly Disagree. All participants were presented with Likert scale questions on the following four statements:

1. ***"The ignition interlock device is an effective law enforcement tool to curb drunk driving."***
2. ***"Vehicle immobilization is an effective law enforcement tool to curb drunk driving."***
3. ***"By providing positive and negative feedback to the driver, the IID changes the behavior of the offender."***
4. ***"Money spent on IIDs could be spent more effectively on other programs such as education and prevention."***

The following graphs show the responses to these statements:

Phase II Analysis

Law Enforcement Overall Response

1. "The Ignition Interlock Device is an effective law enforcement tool to curb drunk driving."

2. "Vehicle immobilization is an effective tool to curb drunk driving."

3. "By providing positive and negative feedback to the driver, the IID changes the behavior of the offender."

4. "Money spent on IIDs could be spent more effectively on other programs such as education and prevention."

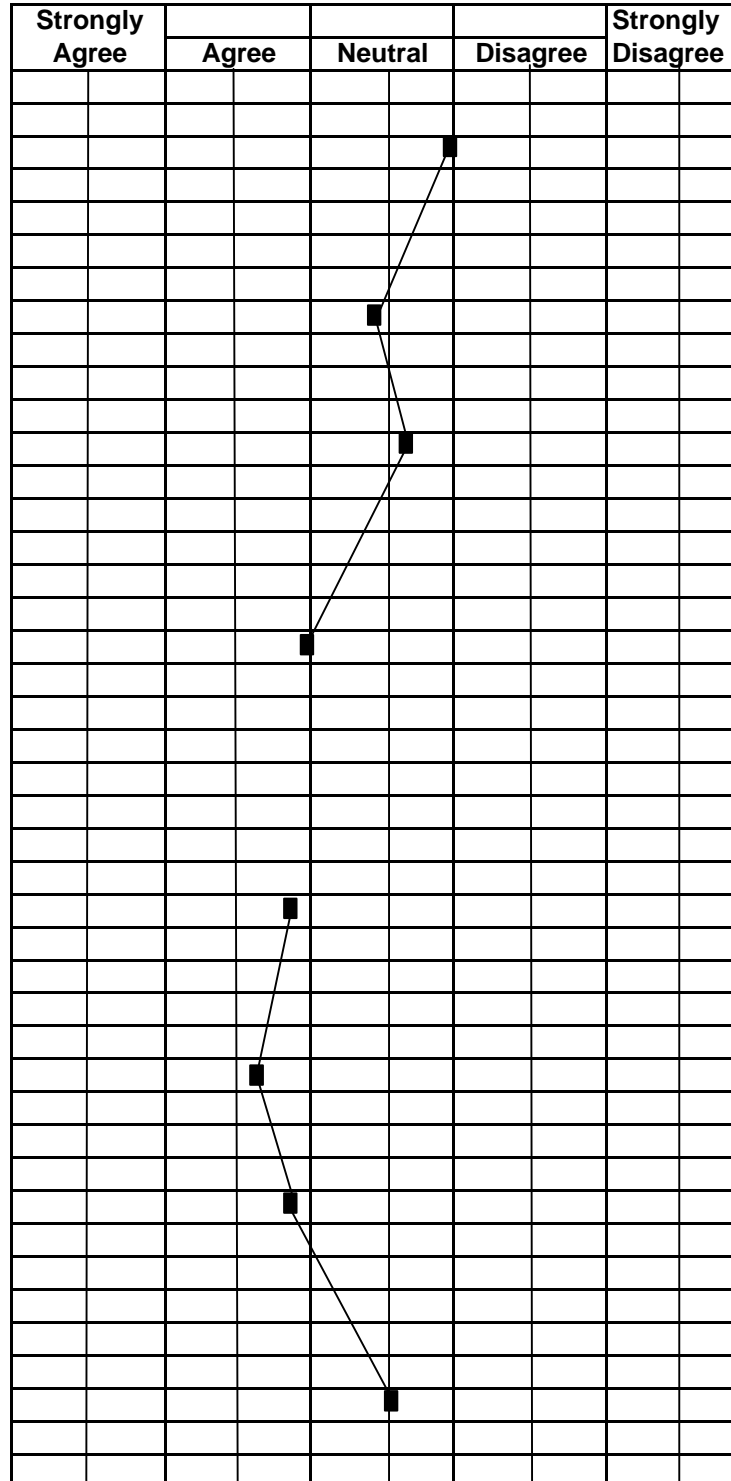
Alcohol Assessment Agencies

1. "The Ignition Interlock Device is an effective law enforcement tool to curb drunk driving."

2. "Vehicle immobilization is an effective tool to curb drunk driving."

3. "By providing positive and negative feedback to the driver, the IID changes the behavior of the offender."

4. "Money spent on IIDs could be spent more effectively on other programs such as education and prevention."



Phase II Analysis (continued)

Legal Community Response

1. *"The Ignition Interlock Device is an effective law enforcement tool to curb drunk driving."*

2. *"Vehicle immobilization is an effective tool to curb drunk driving."*

3. *"By providing positive and negative feedback to the driver, the IID changes the behavior of the offender."*

4. *"Money spent on IIDs could be spent more effectively on other programs such as education and prevention."*

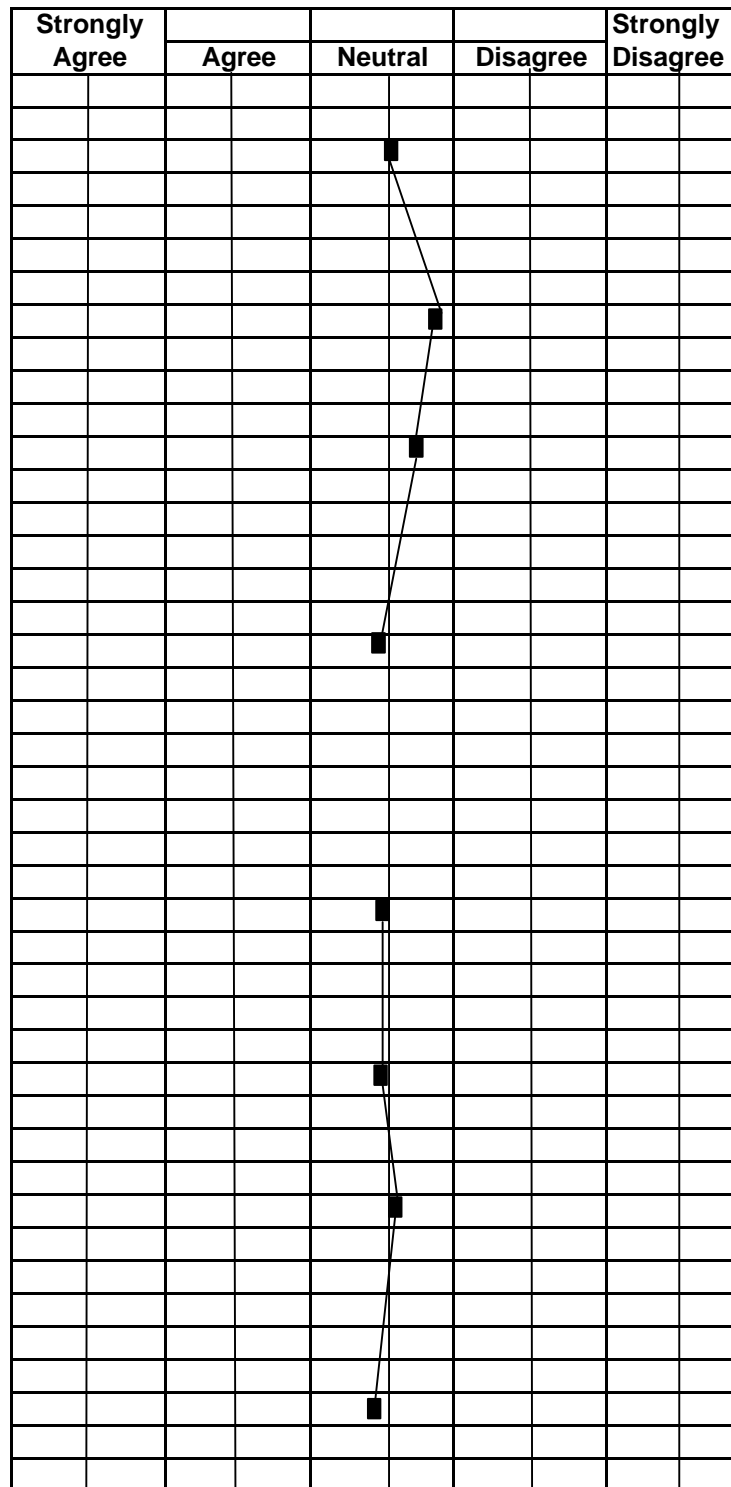
Total Responses

1. *"The Ignition Interlock Device is an effective law enforcement tool to curb drunk driving."*

2. *"Vehicle immobilization is an effective tool to curb drunk driving."*

3. *"By providing positive and negative feedback to the driver, the IID changes the behavior of the offender."*

4. *"Money spent on IIDs could be spent more effectively on other programs such as education and prevention."*



Trends in responses

Assessment professionals responded more favorably than the other two groups to statement 1, 'The Ignition Interlock Device is an effective law enforcement tool to curb drunk driving.' Assessment professionals comprised six of the seven people answering 'Strongly Agree' to statement 1, and zero out of the five answering 'Strongly Disagree.' By contrast, the legal professionals respondents accounted for all five 'Strongly Disagree' responses, and only one of the seven 'Strongly Agree' responses. Almost half of assessment professionals (17 out of 35) marked 'Agree' or 'Strongly Agree,' compared with only two out of nine law enforcement and 10 out of 28 legal professionals members.

Just as they did with IIDs, assessment professionals had a higher opinion of vehicle immobilization as a law enforcement tool compared to law enforcement and legal professionals. Assessment professionals accounted for the majority of the 'Strongly Agree' responses and were much more likely to mark 'Agree' or 'Strongly Agree' than the other two groups.

In line with the first two statements, assessment professionals had more faith in the IID as a device that could change behavior. Only six out of 28 legal professionals respondents (21%) and two out of nine law enforcement respondents (22%) answered 'Agree' or 'Strongly Agree' to that statement (though the sample of law enforcement was too small to draw significant conclusions from). By contrast, 13 out of 35 assessment professionals (37%) answered 'Agree' or 'Strongly Agree.'

Statement 4, 'Money spent on IIDs could be spent more effectively on other programs, such as education and prevention,' provided the most agreement among the groups. Moreover, the distribution of both group and aggregate responses followed a normal bell curve distribution. Respondents were split between agreement and disagreement, with many answering 'Neutral.'

Overall, assessment professionals were more optimistic about the usefulness of IIDs. Members of the legal profession and law enforcement were more skeptical. The aggregate of respondents was evenly split on whether IIDs were using feedback to teach offenders, and whether money spent on IIDs could be more effective elsewhere.

Chapter Three: Responses to Open Questions

In the following sections, responses are transcribed verbatim from the surveys. The comments show the range of opinions and experience with IIDs. On certain questions, there is considerable consensus. On others, stark divisions appear. The responses are grouped by profession, and at the end of each section, conclusions are summarized.

Law enforcement opinions

Law enforcement professionals operate at the beginning and the end of the vehicle sanction process. The traffic stop and arrest leads to the court order, and the subsequent traffic stop may uncover non-compliance with court orders. Although law enforcement may deal with alcohol abusers on a daily basis, they rarely deal with the same individuals continuously.

In the survey, officers were presented with very few tangible facts about IIDs. This was intentional, since the surveys were intended to gauge the comfort level, knowledge, and unbiased opinion of the participant.

Conclusions from law enforcement

- Many law enforcement professionals did not feel well informed about the IID and the law surrounding it. This could be due to the relative obscurity of IIDs in most communities – many officers reported never seeing an IID at all. Some said that they would need more information about whether IIDs stop recidivism and the number of times an IID stopped a driver from operating while intoxicated. Most said their knowledge of IIDs was adequate or limited, and none said they felt very well informed about the device.
- These responses constitute a finding in and of themselves. *Law enforcement rarely sees or deals with ignition interlock devices, despite the fact that the device is the primary vehicular sanction ordered statewide.* In the pool of all drivers, of course, IIDs are rare. Nonetheless, given that thousands of IIDs have been ordered each year for the last several years, it is telling that an officer would never encounter one in the field. This points to a recurring issue in the study and assessment of IIDs – the lack of a mechanism to ensure compliance with a court order.
- Law enforcement responses were critical and skeptical of the IID, as a device and as a policy. One survey concluded “Drop IIDs.” Law enforcement professionals saw vehicle sanctions as a good idea with serious implementation problems. They expressed skepticism about the feasibility of not just IIDs, but all vehicle sanctions. One officer said about vehicular sanctions:

All have drawbacks and are of questionable effectiveness, as habitual drunks will find a way to drive anyway.

Seizure was disliked, because of the inordinate amount of time spent seizing vehicles of questionable quality, but also seen by some as a more effective sanction than IIDs.

- Addressing the issue of IID cost, most law enforcement professionals felt this price was merited by the behavior of the offender.
- Coordination with other agencies, and tracking of IID orders, appears to differ greatly statewide. But most officers said they had no mechanism to investigate whether a person was subject to an IID order. Information sharing with the courts was minimal.
- Some officers saw the task of assuring compliance with vehicle sanctions as an unnecessary burden on police agencies.

Experience with IIDs and immobilization

“None.”

“I believe in the 5 years I have been in (rural location) we have been involved with the immobilization of 2 vehicles and I have had no direct involvement with the IID.”

“I receive copies of all of the IID installations ordered in Dane County. I enter them in a database and send out monthly reports to the Patrol Staff. As far as I know, we have not encountered any in an OWI situation.”

“These [IIDs] are extremely rare. Perhaps one trooper in 80 encounters one in a year.”

“No personal experience, but in discussions with staff it [the IID] is not well received.”

“None and none.”

“No experience with IID. Never encountered IIDs.”

Opinions about IID non-compliance and cost

“I believe it [the problem of non-compliance] is primarily the implementation of the law.”

“No enforcement or follow-up.”

“The device is costly to the offender.”

“If those with IID court orders who did not comply were issued bench warrants for contempt of court, compliance would improve.”

“It is a fair price to pay for their poor judgment. Should they not want to pay, they should not be allowed to drive.”

“It may be somewhat of a hardship, but should not be a burden placed on the taxpayers.”

“Defendant fails/refuses to comply and courts have no effective checking/compliance system. Local jurisdictions not notified.”

“Many who have this level of a drinking problem are not likely to hold down good paying jobs. They are poor and can’t afford this.”

Opinions on coordination with other agencies

“A list of who is supposed to have such a device on their vehicles would be a step in the right direction. Such data could be on their driving record as well as disseminated to police agencies or suspended/revocation logs.”

“[There is] none, a little would be helpful.”

“Communication is good between law enforcement and people involved in treatment of alcoholics and drunk drivers. Communication and coordination with the courts could be better.”

“No coordination/info sharing that the department is aware of. We have no documented OWI cases with IID as a sentence.”

“There is such a large volume of citations written and short court staff ... [with] the volume of citations that they deal with some things can easily fall in the cracks.”

Assessment professional opinions

Assessment professionals are in a very different situation than legal professionals or law enforcement officers. Rather than prescribing or enforcing the vehicle sanctions, assessment professionals are dealing with the people who need, and often flaunt, those sanctions. The assessment worker's view of the IID might be more positive because he only sees it in the context of the compliant recidivist. Since coordination with the courts is minimal in most counties, assessment professionals may not be aware of clients who are not complying with court orders. These recidivists have little reason to mention their sanction to their counselor. In other words, the more positive response might come from a selective viewing of IID-ordered drivers, namely only those who are already complying.

Some surveys from this group were returned intentionally uncompleted. One recipient had attached the following note: "We don't use such a system. No one in this area does. We have no knowledge." Two others wrote, "We have had minimal experience with the device," and "I've never heard of even one. I've been doing IDP assessments & treatment of IDP clients for 26 years."

Langlade, Lincoln, and Clark Counties reported no known use of IIDs or immobilization.

Conclusions from assessment professionals

- Assessment professionals, even more so than law enforcement professionals, deal with alcoholics on a daily basis. Yet assessment professionals had rarely seen IIDs, except in demonstration. Most said their knowledge of IIDs was acceptable or less, often coming second-hand such as through documentation and written reports. Because of this they may have an unrealistic expectation of the real-world application of IIDs.
- IIDs may be an effective tool; however, most respondents agreed that IIDs are a small component of the large task of rehabilitating the recidivist.
- Assessment professionals are cautiously optimistic about IIDs. They see an offender in need of any help they can get. The IID seems like a humane tool that may help a person's recovery.
- Assessment professionals often expressed a desire for more information sharing between the courts and law enforcement. Many felt that the nuances of OWI law were frequently changing, and that they were not made sufficiently aware of the changes.
- Many thought the one-year delay in IID orders, required by federal guidelines, was a detriment to the IID program.

- Assessment professionals were split on the question of IID cost. Many articulated quite clearly that a recidivist needs to assume responsibility for their actions, and paying for an IID is a small concession to ask after multiple OWIs. Others pointed to the constrained financial situation of most repeat offenders and thought IIDs were an unreasonable burden on low-income offenders.
- Assessment professionals disapproved of the courts' handling of IIDs. The lack of follow-up on IID orders was common knowledge to most recidivists, and assessment professionals pointed to this as the reason for non-compliance.

Experience with IIDs and immobilization

"The availability of obtaining the IID was initially an issue – the individual who had an IID did not have his recovery benefited – he just kept on trying to find ways to beat the device."

"For those who follow their court order and get it installed, it helps them stay sober."

"The few IID orders I have worked with did not assist in recovery at all."

"It [an IID] is a very underused alternative in our area. Perhaps it needs to be mandatory after 3 OWIs, not optional."

"[The IID] Doesn't prevent the repeat offender from driving another car."

"The IID has actually been a problem in this case because the individual has not been able to find anyone to service the car since the IID was put on her car. Again back to Appleton when problems arise."

"The IID only assists non-alcoholic clients. The problem drinker figures out how to beat the system. I have actually seen ignition bypasses built around the IID after installation."

"I believe this person's IID was responsible for her not drinking in the time she had the IID. A mechanical 'antabuse.'" [Antabuse is a medicine for alcoholics that induces vomiting when alcohol is consumed]

"I think they work fairly well but there are still a lot of ways to get around them. We are trying to put Band-Aids on gaping wounds."

Opinions on non-compliance and cost

"Cost is the client's excuse, although I don't know that it's a valid one."

“I believe that people will continue to drive/often picking up a beater.”

“The cost is prohibitive to many offenders.”

“In this county, I believe the problem is lack of transportation, low income, ‘good old boy’ syndrome.’ Lack of employment opportunities, isolation of housing (boonies) help with the hardship due to IIDs.”

“The law is not enforced. Nobody from the courts follows up to see if they have had it installed. Once the word gets out that these are not checked on, nobody bothers.”

“If you are a multiple OWI offender – make a choice – public safety at a cost (your responsibility) of \$83/month or don’t drive... It costs a lot more to kill someone and most are spending that much in one weekend drinking.”

“If an offender has progressed to the point that their behavior warrants a court-ordered IID it is serious enough that the offender should be responsible to pay for the device.”

“I believe it is an undue hardship because the object is to get the driver to be sober when driving not punish them more. Most of the people at this point already have fines beyond their means.”

Opinions on coordination with other agencies

“Some sharing, more coordination necessary.”

“Very little [coordination]. One of the problems is the changing of judges.”

“It’s pretty good in our county.”

“There is no coordination at all that I know of.”

“In our area we are in contact an adequate amount and vary the contact as is warranted.”

“None at this point unless counties have active IPID meetings. [Our county] does but lacks attendance by legal and court personnel.”

“Plenty of information available already – coordination is the issue.”

Legal professionals opinions

The most voluble and complete responses came from the legal professionals. People in the courts system deal with the nuts and bolts of IIDs and other vehicle sanctions: prosecution, defense, and sentencing. These respondents are in a position to see many IID cases, and also to see repeat offenders return through the system when sanctions fail.

Unlike the law enforcement or assessment professional, the legal professionals may see a larger cross-section of drinking drivers. Also, legal professionals may hear fewer success stories, since everyone they deal with is at least *accused* of driving drunk.

Conclusions from legal professionals

- Members of the legal professionals survey seemed willing to concede the failings of IIDs. They were aware that while dozens of IID orders may be issued in their jurisdiction annually, the process for ensuring compliance is not strong. The legal professionals participants were not optimistic about the possibility of the IID altering an offender's behavior.
- Legal professionals reported considerably more experience with IIDs than either of the other two groups surveyed. The gap between courts experience and police and assessment experience points to a serious problem of non-compliance.
- Almost all respondents mentioned that more coordination with other agencies would be helpful, but many were unsure how they could fund or achieve this.
- Some jurisdictions were isolated from an IID provider, and this distance was sometimes construed as a hardship on the offender.
- Legal professionals respondents thought that federal standards for sentencing were too inflexible. Some thought that IID should be an option before a 3rd offense, and some wanted the latitude to not impose any sanction on a 3rd offense. Others thought that the IID needed to go on the vehicle right away, rather than after a one-year license revocation. One judge stated that the "Federal law should get with the program!"
- Legal professionals respondents took a more pragmatic outlook on the issue of IID cost. Many conceded that although the price of an IID was fair, the monthly expense meant that most people would not comply with the order. Several judges expressed a desire for a sliding-scale payment system, or the ability to waive fines with proof of IID installation.
- Legal professional opinions of immobilization were not high, and many respondents reported never or rarely using immobilization as a sanction.

Experience with IIDs and immobilization

“Every OWI 3rd case and above. We tend to do IID rather than immobilization.”

“Yes – [ordered IID] hundreds of times.”

“Common on OWI 3 and higher (weekly/monthly – as the cases arise).”

“I order them whenever permitted by law to do so. It is a rare exception when permitted to that I decide not to.”

“In almost all OWI cases an IID is ordered. Our county does not use immobilization, so on every OWI2 where the OWI1 is within 5 years, and on all OWI3s and above where vehicle seizure is not ordered, an IID is ordered.”

“Administered very few times.”

“Yes, occasionally. IIDs are not available in this jurisdiction but we see them ordered as conditions for occupation licenses from urban areas.”

“I would estimate that about 50-60% of the 500+ OWI cases our office handles each year involves an order of an IID.”

Opinions on non-compliance and cost

“Most offenders are facing exorbitant fines and prohibitive insurance costs. Many lose their jobs because of jail time or inability to get an occupation [license]. They simply won’t pay the cost of the IID.”

“Alcoholics spend their money on alcohol, not auto payments and insurance premiums.”

“The court does not set a ‘review date’ for the offender to return with PROOF that the IID was actually installed. The sheriff’s departments are not taking the initiative to see that the IID orders are obeyed.”

“The court should be allowed to reduce drunk driving and OAR fines dollar for dollar for money spent on IIDs.”

“There is no sanction in reality for non-compliance with [an] IID order.”

“It’s a fair price for the device, but the device in practice is a waste.”

“If the large fines don’t deter drunk drivers, the cost of the IID surely won’t.”

“The problem is implementation i.e. follow up/inspection for order enforcement.”

“There is no right to drive but if reduced costs on poverty/other basis would be offered, there should be equal application/availability for all.”

“Usually the offender can’t get an occupational license, so it becomes moot.”

“I think this is an undue hardship, especially in light of the already steep fines associated with OWIs, and the high insurance they are paying with SR22s. Most of these offenders don’t have money to go into treatment for alcohol issues, and then we ask them to pay this. I think we need to be very careful in setting up a system that makes it impossible to comply with.”

“The cost likely contributes to noncompliance, especially in light of steep OWI fines.”

“For the risks they pose to the community I don’t believe it is a hardship. Having a license is a privilege that carries rules (laws) along with it. It is not a right. I believe appropriate sanctions such as the IID are appropriate.”

“No one locally installs them. It is a minimum 60 miles to nearest installer. I don’t know if it is a hardship but it is unrealistic.”

“Implementation is the problem. There is no one to actively check on compliance.”

Opinions on coordination

“There needs to be more. But with precious resources, this can be difficult.”

“We have an ‘Intoxicated Driver Intervention Program’ that has included coordination and information sharing. Perhaps a semi-annual meeting would also be helpful.”

“There is little currently. More is needed.”

“Little coordination – much more needed.”

“Everything is confidential!”

Vendor input

IID vendors were also contacted to offer their opinions on policy and implementation. The discussion occurred via telephone, rather than by survey. Representatives of Guardian, Lifesaver and Consumer Safety Technology were consulted.

Vendors provided some of the standards arguments in favor of the IID. First, the IID is fairer to the family, since it does not remove the car from use by spouse and children. By allowing the offender access to a car, the IID lets the offender continue working and earning money. Secondly, the cost of an IID is a small price to ensure public safety, and especially small given that offenders can spend hundreds of dollars a month on alcohol. Third, IIDs provide a way to keep non-violent offenders out of jail, saving the state money and giving the offender a chance to immediately improve their life.

Vendors were receptive to the idea of a fee offset, where proof of IID installation would reduce fines and court fees. One did not accept the idea that cost was keeping offenders from IIDs; but another was quite explicit that the monthly maintenance and servicing cost was reducing compliance. Both thought a public subsidy for IIDs would increase compliance.

One vendor thought that IIDs were directly altering offenders' behavior by rewarding and punishing them. Another vendor stated that the IID is a behavior modification tool because the offender can better understand that there is a relationship between the blood alcohol content and driving. One vendor thought that some people chose to comply with the IID because they had resolved to change their lives. In other words, the IID to help them reform. Both expressed optimism about the IID's capacity when properly installed and serviced.

The federal standards were not popular with vendors, especially the year-long license suspension before IIDs can be installed. One vendor wanted IIDs to be available before a 3rd offense, at the discretion of the court. One vendor stated that the IID should be used not just for repeat offenders, but for first time offenders as well.

In the area of compliance, vendors readily acknowledged that many orders are not complied with. Budget constraints on courts and municipalities were thought to make them wary of pursuing the IID too vigorously. One vendor saw assessment professionals as the key to compliance: since they are in contact with the offenders on a regular basis, they are in a position to ensure compliance. Another was not sure if offenders could be forced to comply with the order. A third vendor indicated that, in Iowa, the offender is required to show proof of compliance through a certificate administered by the State DOT and felt that this was very useful.

One vendor disputed the assertion that IIDs are not uniformly available statewide, and stressed their diversity statewide and their willingness to accommodate. This vendor noted that he operated in cities across the state and was equipped with a mobile van for service. Another acknowledged that service was not uniform, and that the distance and

expense of traveling to service centers could further deter compliance. A third vendor indicated that the company had just recently come into the IID market in Wisconsin and that their goal was to provide service centers within 50 miles for any offender throughout the state (i.e., through auto dealers, garages, circuit cities).

The Commercial Element of IIDs

Phase I of this report noted another possible element of geographic bias in IID distribution. Counties closer to IID vendors appeared to order proportionally more IIDs than those further away. To gauge this effect, legal professionals (who included judges, DAs and private attorneys) were asked if an IID vendor contacted them.

Five out of 28 respondents said they had been contacted. The sample is not large enough to discern the significance of this number, or to confirm whether IIDs were used more frequently in areas closer to vendors. Still, it confirms that IID companies are in contact with the courts system. Discussions with IID vendors confirmed that one firm used meetings and direct mailings to raise the awareness of IIDs amongst district attorneys and judges.

Chapter Four: Analysis of Responses

Trends within a group - Individual consistencies

Again, the four statements to which respondents offered their opinions were:

1. *“The ignition interlock device is an effective law enforcement tool to curb drunk driving.”*
2. *“Vehicle immobilization is an effective law enforcement tool to curb drunk driving.”*
3. *“By providing positive and negative feedback to the driver, the IID changes the behavior of the offender.”*
4. *“Money spent on IIDs could be spent more effectively on other programs such as education and prevention.”*

Responses to statement one and statement two tended to be similar. Whether the response was positive, negative or neutral, people had similar responses to both questions. This trend was true across all three groups. People either believed that vehicle sanctions were an effective tool to deal with recidivism, or they did not, with some unsure.

Also, reactions to statements one and two were usually the opposite of reactions to statement 4. Those who approved of vehicular sanctions were skeptical about the reallocations of money from sanctions to prevention and education; similarly, those disapproving of vehicle sanctions thought the money could be spent more wisely elsewhere.

Trends between groups

The different professions surveyed responded very differently to certain questions. The most telling difference was when participants were asked how often they saw or dealt with IIDs. While District Attorneys and judges said they often dealt with IID cases, law enforcement and assessment professionals overwhelming said that they rarely, if ever, saw an IID. This highlights one of the central findings from Phase I of this study: *most IID orders are never complied with.*

The division in responses suggests that *implementation of the order is the weak link in the IID process.* The problem is that the offender is responsible for not only seeking out the IID installation, but footing the bill as well. This raises a theme that divided the respondents into two camps. One the one hand some advocated increased surveillance and tougher recrimination for failure to install. On the other side, some saw the IID as an essentially doomed program, a technical device being used to deal with larger societal problems of alcoholism and reckless behavior.

Assessment professionals had the most optimistic view of the IID's possibilities. Part of this difference could be explained by the temperament required for the job. Assessment workers tended to have a more malleable and flexible notion of behavior – they were the most likely to agree with the idea that the IID changes a driver's behavior through direct feedback.

The opinions of police and sheriffs conflict with the opinions of assessment professionals. Law enforcement deals daily with people violating the law, while the assessment professionals attempt to change behavior to prevent further violations. Law enforcement officers see OWI offenders from the opposite end of the legal system as assessment professionals. Thus it may not be surprising that law enforcement had a more pessimistic view of the potential of vehicular sanctions. Since police, sheriffs and state patrol repeatedly come face to face with the implementation failures of IIDs and immobilization, they tended to be more critical of the long-term effects of these sanctions.

Geographic Trends

A division exists between urban and rural respondents in this survey. Generally, participants from more populated areas held higher opinions of IIDs and vehicle sanctions generally. They felt that the cost of IIDs was fair, and that IIDs were aiding the reduction of drunk driving.

In contrast, respondents from rural counties had lower opinions of the IID. Many mentioned the cost of the device, and the inconvenience of remote service and installation locations.

Clearly, the availability of alternative means of transportation could be a factor in explaining this difference. When a person can travel to and from work by foot, bicycle or public transit, the IID has a greater chance of working. But when an automobile is imperative for daily commuting and alternatives do not exist, the IID has a far smaller chance of success. In many rural parts of the state, life cannot work without a car.

In addition to geographic trends in density, there are also geographic trends in income. Separating the two trends are important – denser counties tend to be wealthier, and sparsely populated counties less wealthy. We do not want to confuse one effect for the other. That is, wealthier areas may see IIDs as more effective since orders are more often complied with. The offender has the funds, complies with the order, and IIDs appear useful and straightforward.

Ultimately, the survey data is insufficient to quantitatively address geographic differences. Moreover, it would not be possible to separate the effects of income and other variables. Nonetheless, regional divisions exist in people's perception of IID. Local authorities are able to exercise considerable autonomy in deeming the IID an undue hardship on the offender. For example, three survey respondents from the less-populated counties of Lincoln, Clark, and Langlade reported never encountering an IID. These

counties have population densities of fewer than 40 people per square mile, compared to 365 in Dane County and 3900 in Milwaukee County. *State law applies to all areas, but in the case of the IID, there is clearly quite a bit of local flexibility to take into account differing conditions.*

Chapter Five: Addressing IID non-compliance

Revisiting the purpose of IIDs and immobilization

One of the central questions emerging from phase I of the investigation of IIDs is: why are so few people complying with court orders for IIDs? The responses from legal professionals, assessment professionals, law enforcement and vendors shed some light on this issue.

It may be useful to revisit a section from Phase I of this report, the reasons for criminal punishment. Laws and sanctions may be enacted to deter, to incapacitate, to rehabilitate, or to visit retribution on the offender. The IID occupies a nebulous position, promising to do many or all of these things. What does the evidence tell us?

Most survey participants agreed that the IID does not act as a deterrent. First, the device is not widely known or understood by the general public. Second, since the recidivist has not been deterred by other unpleasant side effects of drunk driving – arrest, fines, loss of license and possible jail time – it is unlikely that the specter of an IID order would alter his behavior.

The IID is also not a device of retribution, at least not principally. The device, after all, allows the recidivist to drive, so long as he stays sober. The strength of the IID as a sanction, trumpeted by its advocates, is the very fact that IIDs are not so retributive as the other sanctions that decisively remove the automobile.

Rehabilitation is a questionable component of IIDs. Participants were asked whether they thought IID altered the offender's behavior. Responses were fairly evenly distributed between agreement, disagreement and neutrality. Evidence from phase one of the report was similarly equivocal on this issue.

Respondents from all groups recognized that IIDs are not uniformly enforced. The recidivist who flaunts an IID order knows that he has a reasonable chance of continuing to drive without being arrested. So he takes his chances, driving carefully, knowing that in the unlikely event of being stopped the officer may not be aware of the law surrounding IIDs.

Similar anecdotes exist for drivers with revoked licenses, drivers using marijuana, and drivers with occupational licenses. When a person risks arrest by simply driving, he tends to drive quite slowly and mindfully. Thus one goal has been achieved: increasing the safety of the streets and decreasing the public menace on roads. Another goal, punishing or restricting the driver, has not been achieved – the driver keeps his/her privilege, albeit in a paranoid state. Thus the IID may improve traffic safety while being a poor incapacitator.

The primary function the IID can provide is incapacitation, and the IID *itself* is an incapacitator. But although there are offenders who comply, respondents concluded that the *body of law and the enforcement* of the IID are not incapacitating.

Fixing the Ignition Interlock Device

Respondents from all categories agreed that IID implementation was insufficient. The problem was usually seen to lie in another branch of the government: courts faulted sheriffs on follow up, law enforcement faulted prosecutors on over zealousness, judges faulted the federal rules as inflexible, and several respondents faulted the DOT. A common refrain existed amongst the disagreement – there was not enough time available, or money dedicated, to making IIDs a tenable solution to repeat drunk driving.

One of the few overwhelming points of accord amongst respondents was that the IID *device* was probably not responsible for the shortcomings of the IID *program*. Although people's experience with the device varied widely, some having never even seen an IID and others having dealt with them hundreds of times, the general sentiment was that the IID worked fine.

Here the respondents split on what was wrong and how to fix it. Some were sure that with *proper implementation and enforcement*, IIDs could act as an effective law enforcement program, keep roads safer, and assist offenders in recovery. They proposed solutions such as: steeper penalties for failure to install IIDs; a stronger mandate to sheriffs and police to enforce IID orders; and some even suggested that IIDs should be installed in every new vehicle by auto manufacturers. At the behest of the court, the IID could then be activated after the driver had committed a certain number of offenses.

But others surveyed felt that *the very notion of IIDs as a rehabilitation and incapacitation tool was flawed*. They pointed to the holes and weaknesses that accompany IIDs: securing another vehicle is not difficult; people in most areas of Wisconsin need automobiles for commuting and shopping; enforcement of IIDs will never be a priority for police time; and without public funding, the individual financial burden of an IID (in addition to OWI fines) will be too steep for most people to comply.

Among the skeptics, there was a further division into two camps. Some thought that IIDs were a misguided, overly technical solution. These participants thought simpler methods such as seizure were more direct and effective, if less nuanced, than IIDs. Others among the IID skeptics simply did not believe vehicular sanctions were an effective law enforcement tool. In all three groups surveyed, approval of the IID was strongly correlated with approval of immobilization and other sanctions. Similarly, disapproval towards the IID was strongly correlated with disapproval towards the other sanctions.

The Issue of Cost – Agreement and Disagreement

Many respondents mentioned cost as a factor in non-compliance. The installation of the IID, and the monthly maintenance fees, were thought to deter IID participation.

Participants who thought cost was a factor were not necessarily sympathetic to the plight of the recidivist – many pointed out that alcoholics often spend more on drinking in a weekend than the monthly cost of IID maintenance. Staking out a middle ground, some thought the fiscal burden was harsh but a needed wake-up call to adjust the behaviors of the habitual drinking driver. However, some respondents thought that the financial pressure of the IID not only rendered the device ineffective, but also was a disproportionate penalty on low-income offenders. The high cost of the device supplants other elements of recovery and rehabilitation that may be more useful in the long run.

A heated point of discussion in the surveys was the cost and payment scheme for IIDs. Currently the offender must bear the entire cost of IID installation and maintenance, which can cost from \$800 to \$1000 annually. Participants were asked if this was a fair price to pay or an undue hardship. Many responded by shifting the question away from a normative issue and towards a pragmatic one. One District Attorney summarized the wealth of opinion nicely:

“It is not unfair to make an offender pay for the costs of their actions. It is naïve if you actually expect them to pay it.”

Another legal professional's respondent echoes this opinion in their answer:

“Who knows what is fair? I just know that most repeat offenders are not going to pay or can't pay.”

In other words, the IID is a fair penalty in theory. But in practice financial issues are one of the main, if not the main, obstacle to IID compliance. If we want the IID to work, or even if we simply want to understand why it will not, we must take poverty and the financial irresponsibility of alcoholism into account.

Many respondents were more moralistic in their outlook. In their opinions, the cost is fair, because drivers have a responsibility to abide by the rules of public discourse and safety. When a person demonstrates extreme irresponsibility in this public sphere, they must pay a steep penalty to be allowed to participate again. Furthermore, offenders are clearly spending large sums on alcohol, so asking them to redistribute this money towards the IID is not an unjust imposition. One sum quoted was \$15 a day for alcohol, versus \$3 a day for an IID. Vendors of IIDs were especially firm on this view, and said that demanding this payment from the offender was the first step towards redirecting their money from alcohol to a more stable life.

Despite the strength of this argument, many of those surveyed disagreed and thought the cost of IIDs was a central component of their implementation failure. Taking a more results-oriented perspective, they acknowledged that although the cost may be fair, the financial demand nonetheless seriously contributes to IID non-compliance. For an extreme analogy, it may be fair to ask felons to pay for the cost of their imprisonment; however, it certainly is not likely, feasible or sustainable.

The Rising Cost of OWI Offenses

Receiving an IID has become more and more costly in Wisconsin. Currently, a driver improvement surcharge of \$355 is attached to each OWI offense, paid by the driver. On July 21st 2003, the Wisconsin State Journal reported that Assembly Bill 164 would increase this surcharge to \$455. With court fees, the processing of an OWI would then cost the driver \$844 under the new charge.

With the state increasingly strapped for revenue, the search for new revenue has moved away from taxation and towards individualized fees and licensure, such as higher hunting and fishing fees and increased OWI charges.

However, attempting to fund law enforcement from fees levied on offenders is problematic. Offenders, and especially recidivist drunk drivers, often have a slew of other problems – alcoholism and other substance abuse are the most obvious – that make sustained employment unlikely. Simply put, these people rarely have the money; trying to squeeze more funds directly from the offender may appear fair to some, but it is unlikely to generate a stable revenue stream. A participant from Marathon County said:

“Many can’t afford their alcohol assessment and driver safety plans costs, so they can’t afford IIDs.”

Another from Adams County simply stated:

“\$\$\$! How many 3rd and subsequent OWI offenders have that kind of money? Most can’t pay their fines!”

Implementation of the IID law requires considerable cooperation and cooperation among the courts, law enforcement, alcohol assessment agencies and other agencies. Several of the respondents indicated that if the goal of the IID program is to improve public safety by keeping unsafe drivers off the road, then public money should be committed to the program.

The Need for Coordination

One unifying strand across the groups surveyed was *the insufficiency of information sharing and coordination among the many agencies involved in dealing with drinking drivers.*

This fits with the earlier finding that IID orders occupy a void where nobody is quite sure whose responsibility it is to follow through on them. Without coordination, courts are not aware of non-compliance with court orders, and law enforcement and assessment professionals are not aware of instances where OWI offenders are in fact under mandate to have an IID.

By and large, participants thought coordination was inadequate, though some felt it was good in their area or jurisdiction. Some respondents mentioned local programs such as the Intoxicated Driver Intervention Program or the Victim Impact Panel and spoke highly of these efforts. The reasons for poor coordination were numerous: privacy concerns; insufficient funds; not knowing where to start; or not enough staff. Many people responded enthusiastically to the possibility of more coordination among agencies. Many noted the need for a more holistic approach to the problem of drunk driving, and increasing coordination between the various agencies would be a simple place to start.

IIDs versus Immobilization versus Vehicle Seizure

The issue of cost and funding dovetails into the discussion of the three available vehicle sanctions. As seen in part one of this report, the IID is far and away the most frequently ordered sanction, and in preliminary 2003 figures its popularity continues to grow. When asked about IIDs in comparison with other sanctions, respondents often pointed to the fact that IIDs did not require the investment of public time and money that seizure and immobilization require.

One attractive feature of the IID is that it is precise where other sanctions are coarse. That is, whereas seizure or immobilization bans a whole family from using the vehicle, IIDs allow spouses and children to continue to use the car, so long as they are not intoxicated. This sensitivity appealed to many people, especially in the courts. However, the IID in practice is far different than in theory. Since most IID orders are not acted upon and installed, the benefits of IID precision are not often experienced.

In fact, some legal respondents saw seizure as the most effective method in theory. But most recognized that the financial aspect of seizure was untenable. There was also a tension between the legal branch and law enforcement – some legal professionals respondents saw police as unwilling to go through with seizure, either because of the time required or a reluctance to deprive rural residents of automobiles.

Funding, IID non-compliance, and vehicle sanctions

One of the few refrains that could be heard throughout the survey was the need for more funding to make IIDs work.

Compared with other vehicle sanctions, orders for IIDs have grown steadily. Many communities experienced difficulties with seizure and immobilization, where the resources expended far outweighed the benefit secured. As such, many jurisdictions have turned to IIDs as an almost automatic response to an OWI that falls within federal repeater standards – a 2nd or subsequent offense within five years.

The IID is attractive in part because it is apparently self-funding. Unlike seizure, where anecdotes abound of thousands of dollars of time spent seizing vehicles worth \$200, IIDs are in theory, self-administering and do not require extensive court or law enforcement time. With budget cuts, the IID will only become more attractive.

But this very fact leads to the fundamental problems of Wisconsin's IID program. IIDs are beguiling to cash-strapped courts and police departments, because they do not require the time and effort of other sanctions. Yet without time and effort, IID orders largely go unheeded and the offender unpunished. Expecting the IID to serve its purpose under current conditions is not viable.

The IID is politically attractive. It is a high technology device that appears to provide an immediate answer to the persistent problem of drunk driving. It makes good public relations, and the offender is required to foot the bill. But without investment in the implementation of the IID law, the device cannot perform its function.

One way or another, more funding is needed to make IID an effective law enforcement tool. Some respondents thought that the price of IIDs was fair: in that case, more money must be devoted to ensuring compliance, including additional court dates, officer time to check installation, and resources for communication between the various agencies. Others respondents believed the cost of IIDs was fundamentally unrealistic for alcoholics with many problems. In this case, a public subsidy is needed to increase IID compliance, to provide a sliding scale for lower-income offenders.

Most participants reported that public knowledge of IIDs is minimal, and some reported that their own knowledge of IIDs was small. Another direction for funding could be public education and outreach, to make reliable information on IIDs available.

Suggestions from survey respondents

In the course of answering open-ended survey questions, several participants suggested ways to improve IID service and implementation.

- **Sliding scale payments.** The cost of IIDs repeatedly arose as a major reason for non-compliance. If lower-income offenders could pay less for the device, respondents suggested, compliance with orders would be higher.
- **A dollar-for-dollar reduction in fines with proof of IID payment and installation.** Rather than demanding that offenders with scant resources pay large fines and the full cost of IID installation, some participants suggested a system where the cost of verified IID installation would offset the fees levied in court.
- **Scheduling a second hearing to verify IID installation.** Offenders would be required to appear in court a certain amount of time after their sentencing to prove compliance.
- **Transfer the responsibility for tracking IIDs to the arresting agency, rather than the county sheriff.**
- **Make assessment professionals responsible for IID compliance, since they are in contact with the recidivists most frequently.**
- **Although unlikely, more than one participant thought that IIDs needed to be installed in every new vehicle.** With this in place, the court would only need to

flip a switch to activate the IID on a repeat offender, removing the problems of compliance.

Phase II Report Findings

- **Assessment professionals held a more optimistic view of IIDs, and sanctions generally, compared to law enforcement and legal professionals.**
- **The survey results for immobilization are mixed. Legal professionals and assessment agencies tend to hold a somewhat higher opinion of immobilization than do law enforcement. However, several respondents (i.e. law enforcement) indicated that immobilization has not proven to be an effective sanction, and that many counties do not have a vehicle immobilization program.**
- **Some respondents (e.g., law enforcement) were skeptical of the effectiveness of any vehicle sanctions due to practical concerns about enforcement – a respondent simply claimed, “They’re all ridiculous.”**
- **Many participants from all the groups surveyed mentioned the issue of ‘follow-through’ or ‘follow-up.’** The respondents felt that IIDs were not a lost cause, but that the state needed to take a more active role in order for the IID program to be effective.
- **On the issue of coordination among courts, law enforcement and assessment agencies, there was general agreement that more cooperation and information sharing is needed and would be beneficial for everyone.**
- **Judges order IIDs more frequently than other sanctions, and some respondents thought this was because the offender bears the entire cost.** These same respondents thought that the IID has turned out to be an unreliable sanction because of this cost structure. Respondents were split on whether the cost of IIDs is fair, but agreed that requiring the offender to wholly pay for their sanction has not been successful thus far.
- **Many respondents from all the groups felt that more money needs to be committed to the IID program to make it more effective.** Respondents were split on where this money should go: some thought that funding enforcement would ensure IID success; some believed that preventative spending on education was the key; others believed money should assist offenders to right their lives after the offense.
- **Some respondents surveyed saw IIDs as politically attractive solutions that make good public relations.** However, others felt the IID was shallow, appealing on the surface but quite difficult to implement properly, and unable to address the underlying problems of drinking and driving in the long term.

- **Survey results indicate that public awareness of IIDs and the body of law surrounding them is minimal.** Assessment professionals, law enforcement and the courts often evaluated their own knowledge of IIDs as adequate or minimal, but rarely excellent.
- **Courts appear to exercise a certain amount of discretion in ordering IIDs.** In rural areas far from installation centers, judges are more hesitant to issue IID orders.
- **Some respondents indicated that IIDs are not uniformly available statewide, and this discrepancy has affected the distribution of IIDs.** Two vendors disputed the assertion that IIDs are not uniformly available statewide, and stressed their diversity statewide and their willingness to accommodate. One vendor noted that he operated in cities across the state and was equipped with a mobile van for service. Another acknowledged that service was not uniform, and that the distance and expense of traveling to service centers could further deter compliance.
- **One of the three IID vendors indicated that they promote the IID as a law enforcement tool to judges.**
- **The Federal, “repeater law” hampers the effectiveness of IIDs.** Since IIDs have been shown to be most effective when installed immediately after the offense, the current one-year hard suspension, followed by an IID order, severely limits IID efficacy. Legal professionals in particular thought that more latitude should be given in ordering IIDs and sanctions in general.
- **Some respondents (from all three groups) felt that an effective IID program cannot place the burden of compliance solely on the offender.** These individuals indicated that one of the aims of the IID is to enhance public safety, and some public time and money is necessary to achieve this goal.

Appendix A: Law Enforcement Survey

The following is a questionnaire on Ignition Interlock Devices (IIDs) and vehicle immobilization. This questionnaire is part of a legislatively mandated evaluation of state law. You have been chosen to participate in this survey because of your status and/or knowledge of this area. Your time is greatly appreciated. These responses will be synthesized into the final component of the official report on Ignition Interlock Devices and will be presented to the Wisconsin State Legislature by December 2003.

If at all possible, please complete and return this survey by June 20th, 2003.

Print surveys should be accompanied with a pre-posted return envelope. Email surveys should be returned to:

[address removed]

If you would like to receive this survey in a different format, or if you have any questions, please contact [name removed] at the above email, or at (608) 26x-xxxx. We may be interested in follow-up questions, so please provide a phone number.

Thank you in advance for your participation.

Bureau of Transportation Safety

Please list your name, geographic location and occupation:

Please circle your response to the following four statements:

1. The Ignition Interlock Device is an effective law enforcement tool to curb drunk driving:

Strongly Agree Agree Neutral Disagree Strongly Disagree

2. Vehicle immobilization is an effective law enforcement tool to curb drunk driving:

Strongly Agree Agree Neutral Disagree Strongly Disagree

3. By providing positive and negative feedback to the driver, the IID changes the behavior of the offender:

Strongly Agree Agree Neutral Disagree Strongly Disagree

4. Money spent on IIDs could be spent more effectively on other programs, such as education and prevention:

Strongly Agree Agree Neutral Disagree Strongly Disagree

5. Do you have any comments or clarifications regarding the four questions above?
6. What, if any, experiences have you had in the field with the IID? How often do you encounter IIDs?
7. DMV data shows that the majority of court orders for IIDs are not complied with. Why do you think this is the case? Is the problem the device itself, or the implementation of IID law?
8. Offenders must pay for IIDs, which can cost up to \$1000 a year. Is this an undue hardship on the offender, or a fair price to pay? Why?
9. How much training, if any, have you received on IIDs and the laws surrounding them?
10. How knowledgeable do you feel about IIDs?
11. How much coordination and information sharing is there between the courts, the law enforcement agencies and people involved in treatment of alcoholics and drunk drivers? Does there need to be more or less?
12. IIDs are one of three vehicle sanctions available in the state – the others are vehicle immobilization (the boot or the club) and vehicle seizure. How do you think IIDs compare to these other sanctions in feasibility and effectiveness?
13. Has your community ever used vehicle immobilization? If so, has immobilization been a successful technique in reducing drunk driving? Is the program still in place?
14. Are IIDs common or uncommon in your area? Are IIDs used too frequently or not frequently enough? To what degree is the public aware of the existence of IIDs?
15. Research on IIDs finds that the devices are most effective for the year immediately following the offense. Currently, federal standards prohibit the use of IIDs within the first year following an OWI conviction. Given this, are IIDs a worthwhile tool in the law enforcement toolkit? Why or why not?
16. Any further thoughts on IIDs or vehicle immobilization?

Appendix B: Assessment Professional Survey

The Assessment professional survey was identical to Law Enforcement survey, except for question 6. In the assessment survey, question 6 read:

Have you worked with people who had IID orders? How often? Did the IID assist in the recovery?

Appendix C: Legal professionals Survey

The Legal professionals survey was identical to the Law Enforcement survey, except for question 6, and the addition of a question at the end.

Question 6 in the legal professionals survey read: Have you ever dealt with a case where an IID was ordered? How often?

The additional question was: DMV statistics show that IIDs are more frequently ordered in counties close to an IID vendor. Have you been contacted by an IID vendor? If so, when and how frequently?

Acknowledgements

Sincere thanks are due to all the professionals who participated in the surveys. The distribution of surveys would not have been possible without the expedience of Printing Services at the Wisconsin Department of Transportation. Many thanks to WisDOT Bureau of Transportation Safety (BOTS) Staff : Dennis Hughes, Tim McClain, Mary Kunkel. WisDOT librarian John Cherney provided invaluable assistance in collecting relevant papers. Special thanks are due to State Patrol Chemist Jane Maney for her innumerable answers and first-hand demonstration of IID technology. Thanks to Tom Anthony of Gateway Technical College (Elkhorn) for his consultation on the psychology of drunk driving.

Thanks to the **State Review Committee** that helped to review this document and who provided helpful comments:

Gail Krc ,Wisconsin Department of Health and Family Services;
Michael Quirke ,Wisconsin Department of Health and Family Services;
Nina Emerson, Director, Resource Center for Impaired Driving, UW-Madison;
Jane Maney, WisDOT, Division of State Patrol;
Susan Hackworthy, WisDOT, Division of State Patrol;
Jon Sobotik, WisDOT, Office of General Counsel,
Gary Prideaux-Wentz, WisDOT, Division of Motor Vehicles;
John Alley,WisDOT, Division of Motor Vehicles;
Carolyn Bourie, WisDOT, Office of Policy and Budget;
Carol Karsten, WisDOT, BOTS;
Katherine Miller, WisDOT, Division of Transportation Investment Management.